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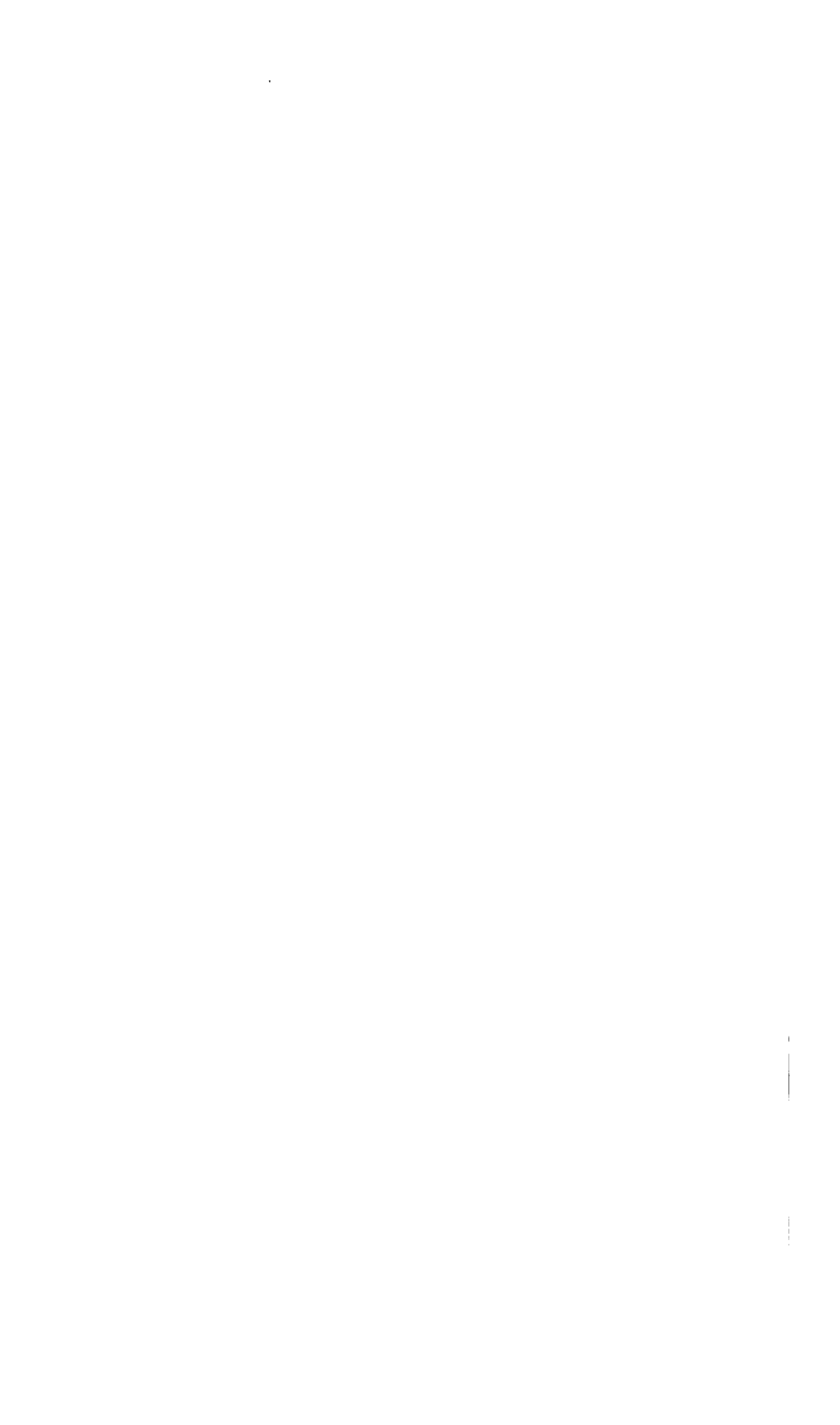
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# THE PACIFIC LAW ENCYCLOPEDIA,

A COMPLETE

## HAND BOOK

OF

ALL MATTERS ORDINARILY COMING BEFORE

JUDGES, ATTORNEYS, JUSTICES OF THE PEACE, SHERIFFS, COUNTY  
CLERKS, CORONERS, NOTARIES, JURORS, GUARDIANS, CORPO-  
RATIONS, BANKS, BOARDS OF SUPERVISORS, BOARDS  
OF EDUCATION, TRUSTEES, DIRECTORS, IN-  
SURANCE OFFICERS, FARMERS, MERCHANTS AND BUSINESS MEN,

SUCH AS

LAWS OF BUSINESS, BANKRUPTCY, MINES, ATTACHMENTS, HOMESTEADS, MILLS,  
DEEDS, MORTGAGES, LEASES, NOTES AND BILLS, HUSBAND AND WIFE,  
MARRIAGE AND DIVORCE, MECHANICS' LIENS, ARBITRATIONS,  
APPRENTICES, PRE-EMPTIONS, LICENSES, PARTNER-  
SHIP, BONDS, AGREEMENTS, ASSIGNMENTS,  
SALES, GUARANTY, ETC., ETC.

WITH

## FORMS,

*In conformity with the Statutes of, and designed for use in, the States and Territories  
of the Pacific Coast.*

By JABEZ F. COWDERY,

Of the San Francisco Bar.

FOURTH EDITION.

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1873.

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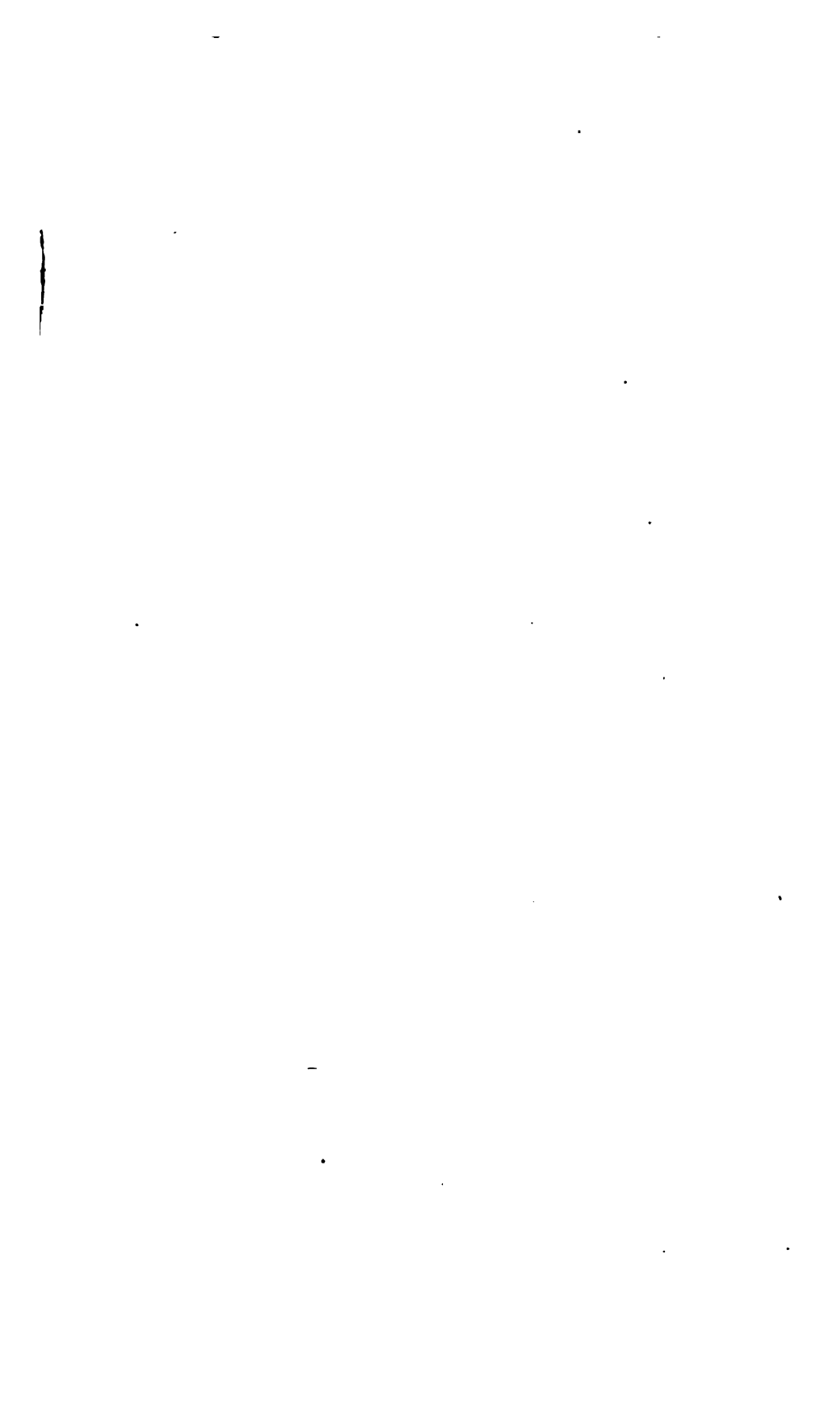
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## PREFACE TO SECOND EDITION.

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SINCE the publication of the first edition of this book, the law regulating Patents, Trade Mark, Copyright, Interest, Minors, Special Partnerships, Game, Fish, the Domestic Relations, etc., has been materially altered by legislative actions.

The changes made by Congress in the law of Patents, Copyright and Trade Mark are of the greatest public importance. These and all other changes have been carefully noted, and the whole subject of Patents, Copyright and Trade Mark re-written for this edition.

Neither time nor labor has been spared to make this edition as nearly perfect as a work of this kind can be made, and yet it contains many imperfections.

Not a few typographical, and other, errors unavoidably crept into the first edition, all of which, so far as discovered, are now corrected.

An appendix has been added in addition to the corrections.

J. F. COWDERY.

SAN FRANCISCO, April, 1871.



## P R E F A C E .

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THIS book, as its name indicates, is an Encyclopedia, or Dictionary of Law, intended for general use, and especially for the guidance of business men.

It covers a wide range—stating the law and giving the forms applicable to more than five times as many subjects as any work of the kind ever published and put into general circulation among the people at large.

It is intended for circulation among state, territorial, city, town and corporation officers, merchants, mechanics, miners, laborers, farmers, and, in short, all that desire information and advice on any point of law; and for the use of all who have neither time, inclination nor opportunity to consult an attorney on every occasion when legal advice is wanted.

The man of action, of business—whatever may be the nature of that business—constantly needs, not only the forms—the old, approved and well-tested forms—necessary in the execution of his purposes, but also the legal principles and rules applicable thereto. It is important that his written instruments should be not only full and legal in form, but also appropriate in all other respects.

To supply this need is the purpose of this book, and the author has labored to make it a sure and complete guide.

All the more important classes of transactions between men of business, and especially such as require to be performed with legal precision and involve instruments in writing, have been considered, and all the essential definitions, maxims, rules, principles and laws relating to the same are given, and also the forms, accompanied with such cautions and directions as the nature of the several subjects seem to demand.

To those who are so fortunate as to have always at hand a good lawyer, who never charges for his services, this

book will be of but little service; to all others it will prove convenient—to many invaluable.

The new feature of giving a summary of the criminal law is thought to be a very important one. If the law is *presumed* to be known to every citizen—and it is always administered as if it were known—why should it not be known *in fact*?

How often do we find offenders trying to plead ignorance of the law, and see them suffering its penalties because such a plea is not admitted! The only remedy is to have the law generally known.

The general laws of California, Nevada and Idaho are, in most respects, similar. Where a statute is quoted which is not applicable to each state and territory, the fact of its non-application is noted at the end of each paragraph. The difference in the several statutes is also noted, and where no note of difference appears, the laws are the same. The practice and general laws of Washington, Montana and Arizona Territories are similar to those of California. Oregon has laws unlike those of California; but, in all cases, however, outside of statutory provisions, the law and forms are universally applicable.

The author is aware of the fact that the country is inundated with books of law and forms similar in many respects to this, and so numerous are they that there is scarcely room for another, yet he is not without hope that his book will proclaim its own merits, and make a place for itself in spite of older and more pretentious travelers in the same or similar paths.

His aim has been to furnish a comprehensive, clear and reliable guide for the business community of the Pacific Coast, in all its multifarious departments of industry and trade, and to that end he has devoted his best care and skill and many months of time; and he believes he has produced a work of value, which will prove acceptable and useful. Should this be the case, he will be content, and deem his labor well rewarded.

J. F. COWDERY.

SAN FRANCISCO, October, 1870.

# LAW ENCYCLOPEDIA.

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## ABANDONMENT.

**Abandonment.**—The relinquishment or surrender of rights or property by one person to another.

**By Husband or Wife.**—The act of a husband or wife who leaves his or her consort wilfully and with an intention of causing perpetual separation. Abandonment is a ground of divorce. See **DIVORCE**.

**In Insurance.**—See **INSURANCE**.

**Abandonment of Rights.**—The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself or by any other person, but with an intention to abandon. Non-user of property does not necessarily or usually constitute an abandonment.

**What may be Abandoned.**—Real or personal property may be abandoned; and the question of abandonment is one of fact for the jury to determine; and the effect, when acted upon by another party, is to divest all the owner's rights in the thing abandoned.

## ABATEMENT.

**Abatement of a Suit.**—A suspension of all proceedings in a suit from the want of proper parties capable of proceeding therein.

**In Contracts.**—A reduction made by a creditor for the prompt payment of a debt due by the payer or debtor.

**Of Legacies.**—The reduction of a legacy on account of the insufficiency of the estate of the testator to pay his debts and legacies.

**In Mercantile Law.**—The deductions from, or the refunding of, duties, sometimes made at the custom house, on account of damages received by goods during importation or while in store.

**Of Nuisances.**—The abatement or removal of a nuisance. See NUISANCE.

## ABDUCTION.

**Abduction.**—Forcibly taking away a man's wife, his child or his maid servant. The unlawful taking or detention of any female for purposes of marriage, concubinage or prostitution. Abduction is an offense at law. See CRIMES AND PUNISHMENTS.

**A Man may recover Damages** of the abductor for the unlawful abduction of his wife. The books are silent as to the remedy of the woman whose husband has been seduced away by another woman; but the law in this respect will doubtless be reformed when woman achieves her full "rights."

## ABET.

**Abet, in Criminal Law.**—To encourage or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a crime is to command, procure or counsel him, to commit it. See CRIMES AND PUNISHMENTS.

**Abettor.**—An instigator or setter on; one that promotes or procures the commission of a crime. The distinction between abettors and accessories, is the presence or absence at the commission of the crime. Presence and participation are necessary to constitute a person an abettor.

## ABEYANCE.

**In Abeyance.**—That is, in expectation, remembrance and contemplation of law; the condition of a freehold when there is no person in being in whom it is vested.

## ABJURATION.

**Abjuration.**—A renunciation of allegiance upon oath. In the United States of America, every alien, upon application to become a citizen, must declare on oath or affirmation, before the Court where the application is made, that he doth absolutely and entirely *abjure* all allegiance and fidelity which he owes to any foreign prince, etc. See NATURALIZATION.

## ABORTION.

**Abortion.**—The expulsion of the fetus at a period of uterogestation so early that it has not acquired the power of sustaining an independent life. See CRIMES AND PUNISHMENTS.

## ABRIDGMENT.

**Abridgment.**—An epitome or compendium of another and larger work wherein the principal ideas of the larger work are summarily contained. When fairly made, it may be justly deemed within the meaning of the law a new work, the publication of which will not infringe the copyright of the work abridged.

## ABROGATION.

**Abrogation.**—The destruction of, or annulling, a former law by an act of the legislative power, or by usage.

## ABSCOND.

**Abscond.**—To go in a clandestine manner out of the jurisdiction of the courts or to lie concealed, in order to avoid their process.

**Absconding Debtor.**—One who absconds from his creditors.

### ABSENCE.

**Absence.**—The state of being away from one's domicile or usual place of residence. A presumption of death arises after the absence of a person for seven years without having been heard from.

### ABSENTEE.

**Absentee.**—A landlord who resides in a country other than that from which he draws his rents. The discussions on the subject have generally had reference to Ireland.

### ABSTRACT OF A TITLE.

**Abstract of a Title.**—A brief account of all the deeds upon which the title to an estate vests. A synopsis of the distinctive portions of the various instruments which constitute the muniments of title.

### ABUSE.

**Abuse.**—Every thing which is contrary to good order established by usage. Abuse of a thing, is the destruction or great injury of it. In one sense, a thing is said to be abused when it is destroyed in using it. For example : The borrower of wine or grain *abuses* the article lent by using it, because he cannot enjoy it without consuming it.

### ABUTTALS.

**Abuttals.**—The butting or boundaries of lands, showing to what other lands, highways or places they belong or are butting.

### ACCEPTANCE.

**Acceptance.**—The receipt of a thing offered by another



with an intention to retain it, indicated by some act sufficient for the purpose.

Under the Statute of Frauds, delivery and acceptance are necessary to complete an oral contract for the sale of goods. In such case, it is said the acceptance must be absolute and past recall, and communicated to the party making the offer.

**Acceptance of Rent** destroys the effect of a notice to quit for non-payment of such rent.

**Acceptance of Bills of Exchange.**—An engagement to pay the bill in money when due. The following are different kinds of acceptances :

*Absolute*—Which is a positive engagement to pay the bill according to its tenor.

*Conditional*—Which is an undertaking to pay the bill on a contingency.

*Express*—Which is an undertaking, in direct and express terms, to pay the bill.

*Implied*—Which is an undertaking to pay the bill, inferred from acts of a character fairly to warrant such an inference.

*Partial*—Which is one varying from the tenor of the bill—an acceptance to pay part of the amount for which the bill is drawn.

*Qualified*—Which is either conditional or partial.

*Supra-protest*—Which is the acceptance of the bill after protest, for non-acceptance by the drawee, for the honor of the drawer or a particular indorser. See **BILLS AND NOTES**.

**Acceptor.**—The party who accepts a bill of exchange—the party who undertakes to pay a bill of exchange in the first instance.

## ACCESSARY.

**Accessory.**—He who is not the chief actor in the perpetration of the offense, nor present at its performance, but is some way concerned therein either before or after the offense was committed. See **CRIMES AND PUNISHMENTS**.

## ACCESSION.

**Accession.**—The right to all which one's own property produces whether that property be movable or immovable, and the right to that which is united to it by accession, either naturally or artificially.

If a **Man Builds a House** on the ground of another with his own materials and without the consent of the owner of the ground, the building becomes, by accession, the property of the owner of the ground.

If the **Materials** of one person are united by labor to the materials of another so as to form a single article, the property in the joint product is, in the absence of any agreement, in the owner of the principal part of the materials by accession.

## ACCESSORY.

**Accessory.**—A thing which is joined to another thing as an ornament, or to render it more perfect.

**Accessory Contract**—One made for assuring the performance of a prior contract, either by the same parties or by others: such as suretyship, mortgages and pledges.

## ACCOMMODATION PAPER.

**Accommodation Paper.**—Promissory notes or bills of exchange made, accepted or indorsed, without any consideration therefor.

Such **Paper**, in the hands of the party to whom it is made or for whose benefit the accommodation is given, is open to the defense of want of consideration, but when taken by third parties in the usual course of business, is governed by the same rules as other paper. See **BILLS AND NOTES**.

## ACCOMPLICE.

**Accomplice.**—One who is in some way concerned in the

commission of a crime, though not as principal. This term includes all persons who have been concerned in the commission of a crime whether as principals or accessaries before or after the fact. See **CRIMES AND PUNISHMENTS**.

## ACCORD.

**Accord.**—A satisfaction agreed upon between the parties to a suit, or which when performed is a bar to all actions upon this account; generally used in the phrase “accord and satisfaction.”

**The Agreement** must be *legal*. An agreement to drop a criminal prosecution as a satisfaction for an assault is void, unless made by authority of Court.

## ACCOUNT.

**Account.**—A detailed statement of the mutual demands in the nature of a debt and credit between parties arising out of contracts express or implied.

**A Statement** of the receipts and expenditures of an executor, administrator or other trustee, of the estate confided to him

**An Open Account** is one in which some term of the contract is not settled by the parties, whether the account consists of one item or many.

**Account Book.**—A book kept by a merchant, trader, mechanic or other person, in which are entered from time to time the transactions of his trade or business. Such books, when regularly kept, may be admitted in evidence.

**Account Current.**—An open or running account between two parties.

## ACCOUNT STATED.

**Account Stated.**—If A sells goods, or does any service for B, and then presents him an account in writing of the same, stating the sum of money due, and B acknowledges it

to be correct—this constitutes an “Account Stated.” The old indebtedness is embraced in the new agreement, and the acknowledgment of the correctness of the account is a new promise or undertaking.

It is conclusive as to the liability of the parties with reference to the transactions included in it, except in cases of fraud or manifest error.

**What must be Shown.**—It must be shown that the party to be charged accepted the account as correct. The acknowledgment that the sum is due is sufficient. If a party retains the account an unreasonable time without making an objection, an acceptance will be inferred.

**A Definite, Ascertained Sum** must be stated to be due, and the demand should be made by a person of legal age.

**Who may State an Account.**—Husband and wife may join in and state an account with a third person. An agent may bind his principal; and a partner may bind the partnership; and they may bind each other in the same way on settlement and dissolution.

**What must be Proved.**—In an action on an “Account Stated,” it is not necessary to prove the items, but only to prove an existing debt and demand and the stating of the account.

**Acknowledgment of Account.**—It is always best to procure an acknowledgment of the correctness of the account in writing. If the debtor lives at a distance, send the account in a letter requesting acknowledgment of the receipt; and the answer, if the debt is acknowledged, will be good evidence of acceptance.

#### FORM

		CITY OF ..... 18..	
Mr. .... To. .... & Co.		Dr.	
Jan. .... 18.. To 1,000 lbs. flour 2½ cts per lb. ....		\$	25 00
“ .... 18.. “ 5,000 “ “ 3 cts “ “ .....			150 00
Total to date .....		\$	175 00

I hereby acknowledge the above account to be correct. Jan. 29, ....  
[Signed] .....

## ACCRETION.

**Accretion.**—The increase of real estate by the additions of portions of soil, by gradual depositions through the operation of natural causes to that already in possession of the owner. The term *alluvium*, is applied to the deposit itself, while accretion rather denotes the act. If an island in a non-navigable stream results from accretion, it belongs to the owner of the bank on the side nearest to it.

## ACCUSATION.

**Accusation.**—A charge made to a competent officer against one who has committed a crime so that he may be brought to justice and punished. See **MAGISTRATE** and **CRIMES AND PUNISHMENTS**.

## ACKNOWLEDGMENTS.

**Acknowledgments Generally.**—To “acknowledge” an instrument, means that the person who executes it acknowledges before an officer, appointed by law, that he executes the instrument before him freely and voluntarily and for the uses and purposes in such instrument mentioned.

## ACKNOWLEDGMENTS.—CALIFORNIA.

**Conveyance.**—Every conveyance in writing, whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner herein-after provided.

**Proof of Acknowledgments.**—The proof or acknowledgment of every instrument, whereby any real estate is conveyed or may be affected, shall be taken by some one of the following officers:

**In this State.**—1st. If acknowledged or proved within this state, by some judge or clerk of a court having a seal, or some notary public or county recorder, or by a justice of the peace of the proper county where the conveyance is executed, and to be recorded only in such county.

**In the United States.**—2d. If acknowledged or proved without this state, and within any state or territory in the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by a commissioner appointed by the government of this state for that purpose, or by any notary public, commissioner of deeds or justice of the peace, authorized to take and certify the acknowledgment or proof of deeds to be used in his state or territory: *provided*, however, that where such proof or acknowledgment shall be taken and certified by any such notary public or commissioner of deeds, other than commissioners of this State, a certificate of the secretary of the state or territory shall also be affixed to the instrument so certified, to the effect that such notary public or commissioner of deeds, other than commissioners of this state, at the time of taking such acknowledgment or proof was such officer, that the signature affixed to such certificate is his genuine signature, and that he is authorized by law to take the acknowledgment of deeds within the state or territory or country in which he may be acting; and where such proof or acknowledgment shall be taken and certified by a justice of the peace, a certificate of the county clerk of the county in which such justice resides, or clerk of a court of record, shall also be affixed to the instrument so certified and to the like effect.

**Outside the United States.**—3d. If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom or empire, having a seal, or any notary public therein, or any minister, commissioner or consul, of the United States, appointed to reside therein: *provided*, however, that where such proof or acknowledgment shall be taken and certified by any such judge or clerk of court, or any notary public without the United States, the same shall be accompanied by the certificate of a minister or consul of the United States resident in such state, kingdom or empire, to the effect that such person was at the date of such proof or acknowledgment such officer; that the signature or seal, or

both such signature and seal of such officer is genuine, and that such officer is authorized by law to take the proof or acknowledgment (as the case may be) of deeds where he may be acting. When any of the officers above mentioned are authorized by law to appoint a deputy, such acknowledgment or proof may be taken by such deputy in the name of the principal.

CERTIFICATE—CALIFORNIA, NEVADA AND IDAHO.

**Every Certificate should show** that the person making the acknowledgment or proof, is personally *known* to the officer, or is proved by a competent witness to be such person, and should be signed by the officer, with his seal of office affixed, if he have one. If he be a judge or clerk, the seal of the court must be affixed. It should also state his full title, and the true date of the act—and that the person executed the same freely and voluntarily for the uses and purposes therein mentioned. *In Oregon*, it should also state the residence of the witness.

**By Married Women.**—When the acknowledgment is made by a married woman it should show also that she was made acquainted with the contents of the conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

**Proof of Execution.**—When the execution of instruments is proved by the testimony of a subscribing witness, the certificate should show that the witness is personally known to the officer to be the person whose name is subscribed to such instrument as a witness thereto, or was proved to be such, by the oath or affirmation of a reliable witness, whose name must be inserted in the certificate.

**The Certificate** must then set forth the proof given by such witness, of his residence, of the execution of the instrument, and of the fact that the person whose name is sub-

scribed to such instrument as a party thereto is the party who executed the same, and that such witness subscribed his name to such instrument as a witness thereto.

When, in the absence or death of the subscribing witnesses, the proof is made by evidence of handwriting, the certificate must show : 1. That the officer is satisfied that all the subscribing witnesses to the instrument are dead or cannot be had to prove its execution. 2. That A B, a competent and credible witness, stated on oath or affirmation, that he personally knew the individual whose name is subscribed to the instrument as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person. 3. That C D, a competent and credible witness, gave the like proof as to the (or one of the) subscribing witnesses, setting it out at length.

**Subpena for Witness.**—Upon application under oath that a witness residing in the county refuses to appear and testify to the execution of an instrument, and that the same cannot be proved without his evidence, the notary, or other officer, may issue a subpena to the witness, who, in case of refusing to appear or to answer, will be liable to fine, damages and imprisonment, until he shall submit to answer, and the instrument may be proved as when the witness is dead.

#### OREGON.

**Who may take Acknowledgments.**—1st. *In the State*—Any judge of the district court, probate court, justice of the peace or notary public ; and the deed must be witnessed by two subscribing witnesses.

2d. *Out of the State, but in the United States*—Any judge of a court of record, justice of the peace or notary public, or other officer authorized by the local laws to take acknowledgments, or a commissioner appointed by the governor of Oregon for such purpose ; and such deed may be executed according to the laws of the state, territory or district. In such cases, the statute of Oregon provides as follows :



**Certificate, etc.**—In the cases provided for aforesaid, unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of this office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine ; and that the deed is executed and acknowledged according to the laws of such state, territory or district.

3d. *In any Foreign Country*—The officers mentioned in the following provision of the Oregon statute, are the proper officers to take acknowledgments :

**Foreign Countries.**—If such deed be executed in a foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, *charge d'affaires*, commissioner or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same under his hand ; and if taken before a notary public, his seal of office shall be affixed to such certificate.

**Subscribing Witness.**—*In Oregon*, proof may be made by a subscribing witness, before any officer authorized to take acknowledgments of deeds, who is personally acquainted with such witness, or has satisfactory evidence that he is the same person who was a subscribing witness ; and the witness must state his own place of residence, and that he knew the person described and who executed such conveyance. When any grantor is dead, out of the state, or refuses to acknowledge, and all the subscribing witnesses are dead or out of the state, proof may be made before the district court or any judge thereof, by proving the handwriting of the grantor and of any subscribing witness.

## WASHINGTON.

**Who may take Acknowledgments.**—Deeds or conveyances of land, or of any estate or interest therein, situated in this territory, may be executed or acknowledged in any state or territory of the United States, in the form prescribed for executing and acknowledging deeds within this territory, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, or before any commissioner appointed by the governor of this territory for such purpose.

In the cases provided for in the preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of the court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of the person subscribed to be genuine.

**Forms of Acknowledgments.**—The same forms of acknowledgment are required in Washington as in California. See ACKNOWLEDGMENTS, CALIFORNIA.

## NEVADA.

**Who may take Acknowledgments.**—The proof of acknowledgment of every conveyance affecting any real estate, shall be taken by some one of the following officers :

1st. If acknowledged or proved within this state, by some judge or clerk of a court having a seal, or some notary public or justice of the peace : *provided*, when the acknowledgment is taken before a justice of the peace in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the clerk of the district court of such county, as to the official character of such justice taking the proof or acknowledgment, and the authenticity of his signature.

2d. If acknowledged or proved without this state and within the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by any commissioner appointed by the governor of this state for that purpose, or by a justice of the peace of any county in any state or territory in the United States, accompanied with the certificate of the clerk of a court of record of the county having a seal, as to the official character of the justice and the authenticity of his signature.

3d. If acknowledged or proved without the United States, by the judge or clerk of any court of any state, kingdom or empire, having a seal, or by any notary public therein, or by any minister, commissioner or consul, of the United States, appointed to reside therein. See ACKNOWLEDGMENTS, CALIFORNIA.

## IDAHO.

**Who may take Acknowledgments.**—The proof or acknowledgment of every conveyance affecting real estate, shall be taken by some one of the following officers :

1st. If acknowledged or proved within this territory, by some judge or clerk of a court having a seal, or some notary public or justice of the peace of the proper county.

2d. If acknowledged or proved without this territory and within the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by any commissioner appointed by the governor of this territory for that purpose.

3d. If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom or empire, having a seal, or by a notary public therein, or by any minister, commissioner or consul, of the United States, appointed to reside therein. See ACKNOWLEDGMENTS, CALIFORNIA.

## FORMS.

*Certificate of Acknowledgment by Party known to the Officer.*

State of California,                    }  
 .... and County of ..... } ss.

On this .... day of ....., A.D. one thousand eight hundred and .....,

before me, . . . . ., a notary public in and for said city and county, duly commissioned and sworn, personally appeared the within named . . . . ., whose name is subscribed to the annexed instrument, as a party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written. . . . .,  
[L.S.] Notary Public.

*Certificate where the Identity of Party is proven to the Officer.*

State of California, }  
.... and County of ..... } ss.

On this .... day of . . . . ., A.D. one thousand eight hundred and . . . . ., before me, . . . . ., judge of the county court, in and for said city and county, the same being a court of record and having a seal, personally appeared . . . . ., satisfactorily proven to me by the oath of . . . . ., a competent and credible witness, by me duly sworn for that purpose, to be the individual described in and who executed the annexed instrument, and the said . . . . . acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and caused the seal of said county court to be affixed, the day and year in this certificate first above written. . . . .,  
[L.S.] Judge.

*By Husband and Wife known to the Officer.*

State of California, }  
.... and County of ..... } ss.

On this .... day of . . . . ., A.D. one thousand eight hundred and . . . . ., before me, . . . . ., a notary public in and for said city and county, duly commissioned and sworn, personally appeared . . . . . and . . . . . his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the individuals described therein, and who executed the same, and they, and each of them, acknowledged to me that they executed the said instrument, each respectively, freely and voluntarily, and for the uses and purposes therein mentioned. And I do hereby further certify, that the said . . . . ., wife of said . . . . ., is personally known to me to be the person whose name is subscribed to said instrument as a party thereto, and that she was by me first made acquainted with the contents thereof, and thereupon acknowledged to me on examination separately, apart from and without the hearing of her said husband, that she executed the same freely and voluntarily for the uses and purposes therein mentioned, without fear or compulsion or undue influence of her said husband, and that she did not wish to retract the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written. . . . .,  
[L.S.] Notary Public.

*By Husband and Wife proven to the Officer.*

State of California, }  
 .... and County of ..... } ss.

On this .... day of ....., before me, etc., etc., [as in the preceding forms], personally appeared .... and .... his wife, whose names are subscribed to the foregoing deed as parties thereto, satisfactorily proven to me to be the persons described in and who executed the within conveyance, by the oath of ...., a competent and credible witness for that purpose, by me duly sworn; and thereupon they, the said .... and .... his wife, and each of them, acknowledged to me that they executed the said instrument freely and voluntarily, for the uses and purposes therein mentioned. And I further certify, that the said ....., wife of the said ....., being first made acquainted with the contents of said instrument, on an examination separate and apart from and without the hearing of her said husband, acknowledged to me that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same.

Witness my hand and seal, etc.

*Proof of the Execution of an Instrument where the Subscribing Witnesses are Dead or Absent.*

State of California, }  
 .... and County of ..... } ss.

On the .... day of ....., A.D. ...., before me, ....., a notary public, in and for said county, duly commissioned and sworn, personally appeared .... and ...., competent and credible witnesses to me personally known; and the said ....., being by me duly sworn, deposed and stated on oath, that he personally knew ....., whose name is subscribed to the annexed instrument as a party thereto; that he well knew said ....'s signature, from having frequently seen him sign his name, and believed the name of said .... so subscribed to said instrument as a party thereto, was subscribed by said .... And the said ....., being by me duly sworn, stated that he knew .... and ....., [or, "well knew ....., one of the persons"] whose names are subscribed as witnesses to said instrument; that he well knew their signatures from having frequently seen them sign their names; and that he believed the names of the said .... and ....., subscribed thereto as witnesses, were subscribed by said persons. And I hereby certify, that I am satisfied that none of the subscribing witnesses to said instrument can be had to prove the execution thereof—the said .... being dead, and the said .... being absent from the State of California.

Witness my hand and seal, etc., [as in the foregoing forms.]

*Acknowledgment of Deed by a Corporation.*

State of California, }  
 .... and County of ..... } ss.

On this, etc., [date] before me personally came ....., the president of ....., to me personally known to be the individual whose name

is subscribed to the foregoing instrument as the president of the . . . . . , and he acknowledged to me that he executed the same as president of said corporation for and on the behalf and in the name of said corporation, as its free and voluntary act and deed, for the uses and purposes therein mentioned, and in pursuance of the order and resolution of said corporation directing such deed to be executed, by signing the same as president thereof and affixing thereto its corporate seal.

In witness whereof, etc., etc.

*By Attorney known to the Officer.*

State of California, }  
 . . . . and County of . . . . . } ss.

On this . . . . day of . . . . A.D. one thousand eight hundred and . . . . , before me, . . . . , clerk of the county court of said . . . . and county, personally appeared . . . . , personally known to me to be the same person who executed by power of attorney the foregoing deed, as the attorney in fact of . . . . , said . . . . being named in the annexed instrument as a party thereto, and therein described as the party executing the same; and the said . . . . acknowledged to me that he executed the same freely and voluntarily, as and for the act and deed of the said . . . . , and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, the day and year in this certificate first above written.

[L.S.]

. . . . .

Clerk

*Certificate of Proof by Subscribing Witness known or proven to the Officer.*

State of California, }  
 . . . . and County of . . . . . } ss

On this . . . . day of . . . . A.D., one thousand eight hundred and . . . . , before me, . . . . , a justice of the peace in and for said . . . . and county, duly commissioned and sworn, personally appeared . . . . , personally known to me [or, "satisfactorily proved to me by the oath of . . . . a competent and credible witness for that purpose, by me duly sworn"], to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who being by me duly sworn deposes and says, that he resides in the . . . . and county of . . . . , that he was present and saw . . . . , personally known to him to be the same person described in and who executed the annexed instrument as a party thereto, sign, seal and deliver, the same; and heard him acknowledge that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said . . . . .

In witness whereof, I have hereunto set my hand the day and year in this certificate first above written.

. . . . .

Justice of the Peace.

*Acknowledgment by a Married Woman whose Husband is not Residing in the State.*

State of California, }  
 County of ..... } ss.

On this .... day of .... 18.. before me, .... district judge of the .... judicial district, in and for said county of .... personally appeared ..... a married woman, to me personally known to be the individual described in and who executed the foregoing instrument; and at the same time also appeared ..... and ....., two credible and disinterested citizens of this state, to me personally known as such, who being by me severally sworn each for himself said, that he is a citizen of the state of California and a resident of the town of ...., county ...., that he is acquainted with the said ....., and with ....., her husband, and has known them, and each of them, for more than one year past. That more than one year ago, to wit: .... months ago, the said ..... deserted his wife, the said ....., and went to ....., to reside, announcing his determination and intention to that effect, and has never since returned. That according to the full belief of deponent the said ..... does not reside in this state, and for one year and more next preceding this date, he has not been *bona fide* residing in this State. All of which is to me satisfactory proof thereof. And thereupon the said ..... acknowledged to me that she executed the said instrument freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereto set my hand and caused the seal of said ..... district court to be affixed the day and year first above written.

[L.S.]

.....

District Judge.

*By Attorney proven to the Officer.*

State of California, }  
 County of ..... } ss.

On this .... day of .... etc., before me, personally came ..... proven satisfactorily to me to be the same person described in and who executed the within conveyance, as the attorney in fact of ...., by the oath of ....., a competent and credible witness for that purpose, by me duly sworn; and thereupon the said ..... acknowledged before me that he executed the same as and for the act and deed of the said ..... freely and voluntarily for the uses and purposes therein mentioned.

Justice, etc.

*By an Executor or Administrator, or Trustee.*

State of California, }  
 ..... County, } ss.

On this ..... day of ....., etc., before me personally came ....., personally known to me to be the person described in, and who executed the within instrument, as the executor of the last will and testament [or, "administrator of the estate"] [or, "trustee of the estate"] of ....., as a party thereto, and the said ..... acknowledged before me that he executed the same, as such executor [or, "administrator"], [or, "trustee"], as aforesaid, freely and voluntarily for the uses and purposes therein mentioned.

In witness, etc.,

.....

Justice, etc.

*By a Sheriff.*

State of California, }  
 .... and County of .... } ss.

On this .... day of ....., etc., before me, personally came ....., Esquire, sheriff [ or, "late sheriff," as may be ], of the said city and county of ....., to me personally known to be the same individual described in and who executed the foregoing instrument, and signed his name thereto as such sheriff; and acknowledged to me that as such sheriff he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal, etc.,  
 [date.]

.....  
 Notary Public.

*Satisfaction of Mortgage and Acknowledgment by Individual known to the Officer.*

I, ....., of the town of ....., in the county of ....., and state of ....., do hereby certify, that a certain mortgage, bearing date the .... day of ....., in the year one thousand eight hundred and ....., made and executed by ... .., of the first part, to me the said ...., of the second part, and recorded in the office of the recorder of the county of ...., in book .. of mortgages, at pages ... and ...., on the .... day of ....., A.D. 18.., [if the mortgage has been assigned, insert the name of the assignee instead of ...., at the commencement of the certificate; omit the words "me the said" in Italic, and insert here: "and which said mortgage was duly assigned to me by the said ...., the mortgagee above named, by assignment, dated the .... day of ....., in the year ...., and recorded in the office of the clerk of the county of .... aforesaid, in book .. of mortgages, at page .., on the .... day of ....., A.D. ....], is fully paid, satisfied and discharged. Dated the .... day of ....., .....

In presence of .....

..... County, ss.

On this .... day of ....., in the year one thousand eight hundred and ...., before me personally came ...., to me personally known to be the individual described in and who executed the above certificate, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal, the day and year in this certificate first above written. ....

[L.S.]

Notary Public.

*Satisfaction of Judgment in a Justice's Court, where a Transcript is filed in the County Clerk's Office.*

State of California, }  
 County of ..... } ss.

County Clerk's Office.

Judgment rendered in favor of the plaintiff against defendant,  
 ..... }  
 against } before ..... Esq., a Justice of the Peace in and for said  
 ..... } county, for ..... dollars and ..... cents, damages and costs.



Transcript filed in this office and judgment docketed the ..... day of ....., in the year ....., in the county court of this county.

Satisfaction of the above mentioned judgment is hereby acknowledged.

County of ....., ss.

I hereby certify that on this .... day of ....., before me personally came the above named .... etc., [the usual form of acknowledgment.]

*Satisfaction of Judgment in a Court of Record.*

State of California, District Court of the }  
..... Judicial District, County of .... }

..... } Of the ..... day of ....., one thousand eight hundred  
against } and .....  
..... } Satisfaction for \$ .....

Satisfaction is acknowledged between ... .., plaintiff, and ... .., defendant, for .... dollars. Judgment docketed the .... day of ....., one thousand eight hundred and ....., in the office of the clerk of said court.

[For certificate, see preceding form.]

*Application for a Subpena to compel a Subscribing Witness to attend before an Officer to prove the Execution of a Conveyance.*

To ..... Esq., notary public [or other officer authorized to take acknowledgments] of ..... county:

I, ...., do hereby make application to you to issue a subpoena, requiring ...., who resides in the town of ....., in said county, to appear and testify before you, touching the execution of a certain conveyance of real estate, made and executed by ...., to me, the said ....., [or if the application is made by the heir or personal representative of the grantee, name such grantee], and to which the said .... is a subscribing witness; the said .... having refused, upon my request, to appear and testify touching the execution of the said conveyance; and the same not having been proved or acknowledged, cannot be so proved or acknowledged without the evidence of the said .... Dated the .... day of ....., 18...

..... County, ss.

..... the applicant above named, being duly sworn, says that the facts stated and set forth in the above application are true.

Sworn before me, this .... day of .... 18...

.....  
Notary Public.

*Form of Subpena.*

State of California, }  
..... County, } ss.

To ...., of the town of .... county of .... in said county:

In the name of the people of the State of California: You are hereby commanded to appear before me, at my office [or, "dwelling-house"], in the town of ....., in sa'l county, on the .... day of ....., instant, at ten o'clock in the forenoon, then and there to testify, touching the execution of a conveyance

of real estate, from ..... to ..... , to which you are a subscribing witness, as appears by the application of the said ..... to me made under oath. Hereof fail not at your peril. Given under my hand, this .... day of ...., 18...

.....  
Notary Public.

*Affidavit to obtain Warrant, to be Indorsed on the Original Subpena.*

State of California, }  
..... County, } ss

..... of ....., being duly sworn says, that on the .... day of ....., instant, at the town of ....., in said county, he served the within subpena on ....., therein named, personally, by then and there showing him the same, and delivering to him a true copy thereof, and by paying [or, "tendering"] to him the sum of ..... for his fees for traveling to the place specified in the said subpena, and for his attendance in pursuance thereof, and his reasonable expenses.

Sworn to before me, this .... day of ....., etc. ....  
Notary Public.

*Warrant against Witness.*

State of California, }  
..... County, } ss.

To the sheriff of said county, greeting :

In the name of the people of the state of California : You are hereby commanded forthwith to apprehend ..... , in your county, and bring him before me, ..... , Esq., county judge of said county, at my chambers, at the court-house in the town of ....., in said county, to testify touching the execution of a conveyance of real estate, from ..... to ..... , to which the said ..... is a subscribing witness, as is said ; the said ..... having been duly subpoenaed to appear before ..... , a notary public, to testify touching the execution of the said conveyance, and having, without reasonable cause, neglected [or, "refused"] to attend in pursuance thereof.

.....  
.....  
County Judge of .... County.

*Commitment for Refusal to Testify.*

The people of the state of California to .... , sheriff of the said county, greeting :

..... having this day been brought before me, on a warrant by me issued to compel his attendance to testify, [where the witness appears in pursuance of the subpena, say : "having this day appeared before me, in pursuance of a subpena by me issued, requiring him to appear and testify"], touching the execution of a conveyance of real estate, from ..... to ..... , to which the said ..... is a subscribing witness, as is said ; and the said ..... , although required by me, having refused to answer upon oath [if the commitment is made on account of the refusal of the witness to answer a particular question deemed pertinent by the officer, insert here : "the following question," etc., specifying it particularly] touching the

execution of the said conveyance. You are therefore commanded forthwith to convey the said . . . . . to the jail of the said county, and there commit him to close custody in said jail, without bail, until he shall submit to answer on oath as aforesaid [or, "the question aforesaid"], or be discharged according to law.

.....

County Judge of . . . . County.

*Oath to be administered to a Subscribing Witness.*

You do solemnly swear, that you will true answers make to such questions as shall be put to you touching the execution of this deed : So help you God ; [or, " You do swear, in presence of the ever-living God, that," etc., as above, omitting the words : " So help you God ;" or, " You do solemnly, sincerely and truly affirm and declare, that," etc., as above, omitting the words as aforesaid.]

*Oath to a Witness proving the Identity of the Parties or of the Subscribing Witness to a Conveyance.*

You do solemnly swear, that you will true answers make to such questions as shall be put to you touching the identity of the parties [or, "the subscribing witness"] to this conveyance : So help you God. [If necessary, vary as in the foregoing form.]

*Oath to a Deponent.*

You do solemnly swear, that the contents of this affidavit, by you subscribed, are true : So help you God. [Vary as above when necessary.]

## ACQUITTAL.

**Acquittal, in Contracts.**—A release or discharge from an obligation or engagement.

**In Criminal Practice.**—The absolution of a party charged with a crime. After an acquittal, either by a court or jury, the accused can never be convicted of the same offense for which he has been once acquitted.

## ACQUITTANCE.

**Acquittance.**—An agreement in writing to discharge a party from an engagement to pay a sum of money. It is evidence of payment, and differs from a release : in this, that the latter must be under seal, while an acquittance need not be.

## ACT OF BANKRUPTCY.

**Act of Bankruptcy.**—An act which subjects a person to be proceeded against as a bankrupt. See **BANKRUPT LAW**.

## ACT OF GOD.

The phrase "**Act of God**," is often met with in law proceedings; where common carriers and others frequently endeavor to limit their responsibility by claiming that the destruction or injury of goods in their keeping was caused by the "**Act of God**."

In the following cases the carrier or custodian of goods is not accountable for the loss or injury of goods in his keeping—when a storm, lightning or earthquake, destroys them—when they are captured by pirates or the public enemy—when a collision at sea is the cause of the loss; but only when no blame is imputable to the injured ship.

Unless the loss was occasioned by the "**Act of God**," so called, or the perils of the sea (which are considered the same), and the proof of the same lies on the carrier or custodian of the goods, their value may be recovered.

## ACTION.

**Action.**—The formal demand of one's right from another person or party, made and insisted on in a court of justice. "**Actions**," includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person or party of another in such court, including an adjudication upon the right, and its enforcement or denial, by the court.

## ACTUARY.

**Actuary.**—The manager of a joint stock company, particularly an insurance company. In some corporations a clerk is called an actuary.

## AD DAMNUM.

**Ad Damnum.**—The technical name of that part of the writ or pleading that contains a statement of the amount of plaintiff's injury. As a general rule, the plaintiff cannot recover greater damages than he has claimed in the *ad-damnum* clause of his complaint.

## AD INTERIM.

**Ad Interim.**—In the mean time. An officer is sometimes appointed *ad interim*, when the principal officer is absent, or for some cause incapable of acting for the time.

## AD VALOREM.

**Ad Valorem.**—According to the valuation. Duties are specific or *ad valorem*. *Ad valorem* duties are always estimated at a certain per cent. on the valuation of the property.

## ADJUSTMENT.

**Adjustment, Insurance.**—The determining of the amount of loss. To render an adjustment binding, it must be intended and understood by the parties to a policy to be absolute and final. It may be made by indorsement on the policy, or by payment of the loss, or the acceptance of an abandonment. If one party is led into a material mistake by fault of the other, the adjustment will not bind him. The general rule is, that the amount of loss is governed by that of the insurable interest, so far as it is covered by the insurance. See INSURANCE.

## ADMINISTRATOR.

**Administrator.**—The management of the estate of an intestate, or of a testator who has no executor. See EXECUTORS AND ADMINISTRATORS.

## ADMIRALTY.

**Admiralty.**—A court which has a very extensive jurisdiction of maritime causes, civil and criminal. In the United States, admiralty jurisdiction is vested in the United States district courts. From this court cases may be removed to the circuit court, and ultimately to the supreme court.

## ADMISSIONS.

**Admissions, Evidence.**—Concessions or voluntary acknowledgments made by a party of the existence or truth of certain facts. They may be made by a party to the record, or by one identified in interest with him. An attorney's admissions in a case bind the client and parties to the suit.

## ADULT.

**Adult.**—One of full age. See **CONTRACTS—MINORS** and **CRIMES AND PUNISHMENTS**.

## ADULTERER.

**Adulterer.**—One who corrupts; one who corrupts another man's wife. See **ADULTS—DIVORCE**.

## ADVANCES.

**Advances.**—Payments made to the owner of goods by a factor or agent, who has or is to have possession of the goods for the purpose of selling them.

An Agent is entitled to reimburse himself from the proceeds of the goods, and has a lien on them for the amount paid; and he may have his action against the owner if the sales are not sufficient to cover the advances.

## ADVERSE POSSESSION.

**Adverse Possession.**—The enjoyment of land held adversely to all the world or to some person who claims the title or right of possession. When such possession corresponds with the period prescribed by the limitation act, the law raises a presumption of a grant to the possessor. See LIMITATIONS.

## ADVERTISEMENT.

**Advertisement.**—Information or knowledge communicated to individuals or the public in a manner designed to attract general attention. A man who advertises his business is wise; he who does not is little less than a fool.

The Law in many instances requires parties to advertise in order to give notice of acts which are to be done; in these cases the advertisement is, in general, equivalent to notice. In certain cases, a summons must be published: that is, advertised.

## ADVOCATE.

**Advocate.**—An assistant; adviser; a pleader of cases. In America, an attorney at law is an advocate. In England, an advocate is distinct from attorney. See ATTORNEY AT LAW.

## AFFIDAVIT.

**Affidavit.**—A statement or declaration reduced to writing, and sworn or affirmed to before some officer who has authority to administer an oath. It differs from a deposition: in this, that in the latter, the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*.

## AFFIRMANCE.

**Affirmance.**—The confirmation of a voidable act by the party acting who is to be bound thereby. If it were not affirmed the act performed would not be binding.

## AFFRAY.

**Affray.**—The fighting of two or more persons in some public place to the terror of the people. It differs from a riot in not being premeditated. See **CRIMES AND PUNISHMENTS**.

## AFORETHOUGHT.

**Aforethought.**—Premeditated; prepense. The length of time during which the accused has entertained the thought of committing the offense is not very material provided he has in fact entertained such thought; he is thereby rendered criminal in a greater degree than if he had committed the offense without premeditation. See **CRIMES AND PUNISHMENTS**.

## AGENCY.

**Principal and Agent.**—Whenever one person authorizes another to represent or do any business for him, the person so authorizing is the *principal*, and the person authorized is the agent; and the agent may bind the principal to the extent of his authority and no further, unless after the unauthorized act the principal confirms it expressly or by implication.

**Who may be Agent.**—One who is disqualified from contracting on his own account may act as the agent of another competent person. Thus infants and married women may act as agents.

**Responsibility of Principal.**—The principal is responsible for the acts of his agent, and is not permitted to deny them whenever it appears that he has actually given authority to the agent to act for him; and also when by words or acts he has permitted those with whom he deals to believe him to be clothed with full authority. The responsibility of the principal rests on two grounds: 1st. The giving of actual authority. 2d. Leading those who deal with the agent to believe that such authority is given.



**Different kinds of Agents.**—Agents are of two kinds, general and special. A general agent is one who is authorized to act for the principal in all his business of a particular kind. A special agent is only authorized to act for his principal in one or a few specified things. It is sometimes difficult to distinguish between a special and general agent, but it is always safe to conclude that an agent has authority to do any act within the scope of the business engaged in. For example: An agent doing a banking business in the name of another will be presumed to have authority to receive deposits, general or special; and also in mercantile transactions, an agent may buy or sell on credit if such is the custom of those merchants engaged in similar business. In such cases, it may be a fact that the banking agent has no authority to receive deposits, nor the mercantile agent no authority to buy or sell on credit; still the principal will be bound unless he can show clearly that those dealing with the agent had notice of the want of authority in the agent.

**This is not the Rule**, in special agencies, because the agent is appointed for a specified purpose, and those who deal with him must inquire into the extent of his authority.

**Authority, how Given.**—Authority may be given to an agent either by writing or by word of mouth. If the agent is expected to deal with real estate in any way the authority must be in writing, and such writing is called a power of attorney. [See POWER OF ATTORNEY, *post.*] Where the authority is oral the agent may make written contracts to bind his principal; but not under seal. If one is repeatedly employed to do certain things—as a wife, son or daughter, to collect rents, sign receipts and the like, or a servant to make purchases—in these cases one dealing with such person is justified in believing him authorized by the principal to do those things.

**Confirmation of Agent's Acts.**—An agency may be confirmed by any subsequent adoption and ratification; but only in cases where the person so ratifying had knowledge of all the principal material facts; and it is a general rule of law, that a person who holds and enjoys the beneficial

results of the acts of a person who assumes to act as his agent, is estopped from denying that such person was his agent. And this rule has been carried to the extent of holding valid the acts, *under seal*, of an unauthorized person, where a benefit had resulted and had been enjoyed by his assumed principal. If the acts of a person assuming to be an agent, are not disavowed within a reasonable time by the supposed principal after knowledge, he will be bound.

**Responsibility of Agent.**—Whenever an agent departs from his authority, so the principal is not bound by his acts, he becomes himself responsible as though he had not assumed to act as agent.

### AGISTER.

**Agister.**—One who takes in horses or other animals to pasture at certain rates. He is not bound to take all horses offered to him, nor is he liable for any injury done to such animals in his care, unless he has been guilty of negligence. He has no lien on the animal for his charges; nor has a livery-stable keeper. An inn keeper has a lien.

### AGREEMENT.

**Agreement.**—A coming together of parties in opinion or determination; the union of two or more minds in a thing done or to be done; a mutual assent to do a thing. All contracts are agreements. See **CONTRACTS**.

### ALIBI.

**Alibi.**—Presence in another place than that described. When a person charged with a crime proves that he was at the time alleged in a different place from that in which it was committed, he is said to prove an *alibi*, the effect of which is to lay a foundation for the necessary inference that he could not have committed it.

## ALIEN.

**Alien.**—One of foreign birth. In the United States, one born out of the jurisdiction of the United States. See NATURALIZATION.

## ALIENATION.

**Alienation of Estates.**—The transfer of the property and possession of lands, tenements and other things, from one person to another. It is particularly applied to absolute conveyances of real property.

## ALIMONY.

**Support of Wife.**—Alimony is defined to be the allowance which a husband, by order of court, pays to his wife, living separate from him, for her maintenance.

**Pending Suit.**—Alimony, pending suit, is that ordered during the pendency of an action. See DIVORCE.

**Permanent Alimony.**—Permanent alimony is that ordered by the court for the use of the wife *after* the termination of the suit.

**The Practice on the Pacific Coast.**—The courts of the Pacific coast decree alimony where the husband drives the wife from his house, or refuses to support her without just cause; in such case the wife is not compelled to sue for divorce, but can sue to compel her husband to support her, and even in cases where she has no legal ground of divorce. Where a divorce has been granted the court will always decree alimony, if the wife is without fault.

**During the pendency** of an action for divorce, whether the wife be plaintiff or defendant, the court will decree alimony to her if it appears by affidavit that she has not sufficient means to carry on the suit. In such case, the court usually orders a certain sum to be paid her for costs, counsel fees and support, during the action. The amount depends

on the wealth of the husband, who can defeat the application altogether if it appears that he is poor and without means. It is usually paid at stated periods, as for instance, on the first day of every month or every year, depending, in a great measure, on the situation of the parties; but it is never paid in one sum, as that would not be alimony but division of the property.

### ALLEGATION.

**Allegation.**—The assertion, declaration or statement, of a party to an action of what he can prove.

### ALLEGIANCE.

**Allegiance.**—The tie which binds the citizen to the government, in return for the protection which the government affords him. When a citizen of one country renounces his allegiance and becomes a citizen of another he acquires a new allegiance. Natural allegiance, is that which results from the birth of a person in the country of his father. See NATURALIZATION.

### ALLIANCE.

**Alliance.**—The union or connection of two persons or families by marriage; affinity.

**In International Law.**—A contract, treaty or league, between two sovereigns or states, made to increase their safety and common defense.

### ALLUVIUM.

**Alluvium.**—The increase of the earth on a shore or bank of a river by the force of the water, as by a current or by waves, which is so graded that no one can judge how much is added at each moment of time. The proprietor of the bank so increased is entitled to the addition so deposited.

## AMBIGUITY.

**Ambiguity.**—Uncertainty of meaning of an expression used in a written instrument.

*Latent*—Is that which arises from some collateral circumstance or extrinsic matter in cases where the instrument itself is sufficiently certain and intelligible

*Patent*—Is that which appears on the face of the instrument; that which occurs when the expression of an instrument is so defective that a court of law, which is obliged to put a construction upon it, placing itself in the situation of the parties, cannot ascertain therefrom the parties' intention.

## AMNESTY.

**Amnesty.**—An act of oblivion of past offenses granted by the government to those who have been guilty of any neglect or crime; usually, upon condition that they return to their duty within a certain period.

## ANNUITY.

**Annuity.**—A yearly sum stipulated to be paid to another, in fee, or for life, or for years, and chargeable only on the person of the grantor.

## ANSWER.

**Answer.**—A defense in writing made by a defendant to the charges contained in a bill, information or complaint, filed by the plaintiff against him in a court.

## APPEAL.

**Appeal.**—The removal of a case from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and re-trial, if necessary. See COURTS OF JUSTICE.

## APPEARANCE.

**Appearance.**—A coming into court as a party to a suit, whether as plaintiff or defendant. The formal proceeding by which a party submits himself or case to the jurisdiction of the court. A party may appear in person or by attorney.

## APPELLANT.

**Appellant.**—He who makes an appeal from one jurisdiction to another. See **APPEAL**.

## APPRAISER.

**Appraiser.**—A person appointed by competent authority to value goods or real estate. See **ESTATES OF DECEASED PERSONS**.

## APPURTENANCES.

**Appurtenances.**—Things belonging to another thing as principal, and which pass as incident to the principal thing. If a house and land be conveyed, everything passes which is necessary to the full enjoyment thereof, and which is incident and appurtenant thereto.

## ARBITRATION AND AWARD.

**Arbitration and Award.**—Whenever two or more people find themselves in trouble with each other, regarding matters of business, before going into courts it is always best to try and settle the disputes by arbitration, and thereby save costs, annoyances and delays, of the law, and much vexation of spirit. If the following provisions of the law are followed and the forms properly used, the reader cannot well go astray:

**Submission.**—The act by which two or more parties refer a matter in dispute to the decision of third parties, is called

*submission*; the parties to whom the matter is referred, *arbitrators*; and their decision, an *award*

**Award, when Good.**—The award, to be good, must not embrace any matter not comprehended in the submission. The award must comprehend every item or thing submitted. It must not be of a thing unreasonable nor against law, or impossible to the party; and it must also be certain and capable of being reduced to certainty.

**The following** is the law of California, Nevada and Idaho, on this subject:

**Who may Submit.**—Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.\*

**To be in Writing.**—The submission to arbitration shall be in writing, and may be to one or more persons.

**May be Entered as an Order of Court.**—It may be stipulated in the submission, that it be entered as an order of the county court or of the district court, for which purpose it shall be filed with the clerk of the county where the parties, or one of them, reside. The clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

**Power of Arbitrators.**—Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time

\* This does not relate to Divorce.

to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

**Majority to Decide.**—All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

**Award to be in Writing.**—The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in his judgment book, and shall thereupon have the effect of a judgment.

**Court may Vacate Award.**—The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators or not, in its discretion:

1st. That it was procured by corruption or fraud.

2d. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

3d. That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite or cannot be performed.



**Court may Modify or Correct.**—The court may, on motion, modify or correct the award, where it appears:

1st. *That there was* a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

2d. *When a part* of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted.

3d. *When the award*, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

**Appeal will Lie, when.**—The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action, but the judgment entered before a motion is made shall not be subject to appeal. [In Idaho, a writ of error may correct.]

**Costs and Damages.**—If a submission to arbitration be revoked, and an action be brought therefor, the amount shall only be costs and damages sustained in preparing for and attending the arbitration.

#### OREGON.

**Statutes of Oregon.**—The foregoing provisions apply substantially to *Oregon*, except so far as modified by the following sections of the statutes of that state on the subject.

All controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators.

**When Submission may be Made.**—No such submission shall be made respecting the claim of any person to any estate in fee or for life, to any real estate; but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration; but nothing herein contained shall preclude the submission and arbitration of controversies according to the common law.

**Appearance, how Made.**—The parties may appear in person, or by their lawful agents or attorneys, before any justice of the peace or clerk of the district court, and there sign and acknowledge an agreement in substance as follows:

Know all men that ..... of ...., and ....., of ....., have agreed to submit the demand, a statement whereof is hereto annexed [“and all other demands between them,” as the case may be], to the determination of .... and .....; the award of whom, or the greater number of whom, being made and reported within .... days from this date, to the district court for the county of ....., shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing, the other parties may proceed in his absence.

Dated this .... day of ....., A.D. 18.. .....

And the justice or clerk shall subjoin to the said agreement his certificate, in substance as follows:

State of Oregon, }  
County of ....., } ss

Personally appeared before me, the above named .... and ....., [or, “personally appeared the above named ....., and the said ....., by ...., his attorney,” as the case may be], and acknowledged the above instrument, by them signed, to be their free act.

Dated this .... day of ....., 18.. .....

Justice of the Peace.

**Specific Demand.**—If any specific demand be submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement of submission, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner, according to the agreement of the parties.

**The Award.**—The award shall be delivered by one of the arbitrators to the clerk of the district court, designated in the agreement of submission, or shall be inclosed and sealed by them and transmitted to the clerk, and shall remain sealed, until opened by such clerk.

*The award* may be returned at any term or session of the court that shall be held within the time limited in the submission; and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceed to act upon the award.

**Judgment.**—Upon such award being confirmed or modified, the court shall render judgment in favor of the party to whom any sum of money or damages shall have been awarded that he recover the same; and if the award shall have ordered any act to be done by either party judgment shall be entered that such act be done according to such order. The costs of proceedings shall be taxed as in suits; and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

**Record of Judgment.**—A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, or other act to be done, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Such record shall be filed and docketed as records of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions; and may in like manner be moved and reversed by writ of error or appeal, and execution shall issue thereupon.

**Of Costs.**—If there be no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge

reasonable, including therein a compensation for their own services ; but the court may reduce the sum charged for the compensation of the arbitrators if it shall appear to be unreasonable.

**Court may enforce Award.**—Where by such judgment any party shall be required to perform any act other than the payment of money, the court rendering such judgment shall enforce the same by rule ; and the party refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

#### FORMS.

##### *General Submission—Short Form.*

We, the undersigned, mutually agree to submit and do hereby submit all our matters in difference of every name or nature, to the award and decision of . . . . ., . . . . ., and . . . . ., for them to hear and determine the same, and make their award in writing, on or before the . . . . . day of . . . . . next.

Witness our hands this . . . . . day of . . . . ., 18

In presence of . . . . .

. . . . .  
. . . . .

##### *General Submission.*

Whereas, differences have for a long time existed, and are now existing and pending, between . . . . ., of, etc., and . . . . ., of, etc., in relation to divers subjects of controversy and dispute : Now, therefore, we, the undersigned . . . . ., and . . . . ., aforesaid, do hereby mutually covenant and agree, to and with each other, that . . . . ., . . . . ., and . . . . ., of, etc., or any two of them, shall arbitrate, award, order, judge and determine, of and concerning all and all manner of actions, cause and causes of actions, suits, controversies, claims and demands whatsoever, now pending, existing or held, by and between us, the said parties ; and we do further mutually covenant and agree, to and with each other, that we will in all things faithfully observe, keep and abide by, the decision and award said arbitrators shall make in writing, on or before the . . . . . day of . . . . . A.D. 18.

Witness our hands and seals this . . . . . day of . . . . . 18..

. . . . . [L.S.]'

. . . . . [L.S.]

##### *Special Submission.*

Whereas, a controversy is now existing and pending, between . . . . ., of, etc., and . . . . ., of, etc., in relation to certain mining claims and quartz mills, made by and between the said parties, at the town of . . . . ., aforesaid, on the . . . . . day of . . . . . last past : Now, therefore, we, the undersigned . . . . . and . . . . ., aforesaid, do hereby submit the said controversy to

the arbitrament of . . . . ., and . . . . ., of, etc., or any two of them; and we do mutually covenant and agree, to and with each other, that the award to be made by the said arbitrators, or any two of them, shall in all things, by us, and each of us, be well and faithfully kept and observed; *provided*, however, that the said award be made in writing, under the hands of the said . . . . ., and . . . . ., or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on the . . . . . day of . . . . . next. [If it is stipulated that the submission be entered as an order of court, add the following: "and it is hereby agreed and stipulated that this submission to arbitration shall be entered as an order of the . . . . . court."]

Witness our hands [as in the foregoing].

#### *Bond of Arbitration.*

Know all men by these presents, that I, . . . . ., of, etc., am held and firmly bound to . . . . ., of, etc., in the sum of \$ . . . . lawful money [or, "gold coin"] of the United States to be paid to the said . . . . ., or to his executors, administrators or assigns, for which payment, to be well and faithfully made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal; dated the . . . . . day of . . . . . A.D. 18 . . . .

The condition of this obligation is such, that if the above bounden . . . . ., his heirs, executors and administrators, shall, and do, in all things, well and truly abide by, perform, fulfill and keep, the award, order, abitrament, and final determination of . . . . ., and . . . . ., of, etc., arbitrators, as well on the part and behalf of the above bounden . . . . ., as of the above-named . . . . ., to abitrate, award, order, judge and determine, of and concerning all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties, so as the said award be made in writing, under the hands of the said . . . . ., . . . . ., and . . . . ., or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on or before the . . . . . day of . . . . ., then this obligation to be void, or else to remain in full force.

Sealed and delivered in presence of . . . . . [L.S.]

. . . . . [L.S.]

#### *Condition of Bond on a Special Submission.*

The condition of the above obligation is such: That if the above bounden . . . . . shall well and truly submit to the decision of . . . . ., . . . . ., and . . . . ., named, selected and chosen arbitrators, as well by and on the part and behalf of the said . . . . ., as of the said . . . . ., between whom a controversy exists, to hear all the proofs and allegations of the parties, of and concerning a certain mining claim made by and between them, at the town of . . . . ., aforesaid, on the . . . . . day of, etc., and all matters relating thereto, so as the award be made, etc., [as in the foregoing].

*Notice to Arbitrators of their Appointment.*

To ...., ...., and ...., Esquires:

You are hereby notified, that you have been nominated and chosen arbitrators, as well on the part and behalf of the undersigned ...., of, etc., as of ...., of, etc., also undersigned, to arbitrate, award, etc., [specifying the time within which, as stated in the submission or bond, the award must be made]; and you are requested to meet the said parties at the office of ...., in the town of ...., aforesaid, on the .... day of, etc., at ... o'clock in the .... of that day, for the purpose of fixing upon a time and place when and where the proofs and allegations of the said parties shall be heard.

Dated the .... day of, etc.

Yours, etc., .....  
.....

*Notice of Hearing.*

In the matter of an arbitration, of and concerning certain }  
matters in difference between .... of the one }  
part, and .... of the other part.

Sir: You will please take notice that the arbitrators have appointed a hearing in the matter above specified, to be had before them, at the house of ...., in the town of, etc., on the .... day of, etc.

Dated the .... day of, etc.

Yours, etc., .....

Or, ...., Attorney for .....

To ..... Or, ...., and ...., Arbitrators.

*Arbitrator's Oath.*

[To be administered by any officer authorized to administer oaths.]

You do severally swear, faithfully and fairly to hear and examine the matters in controversy between ...., of the one part, and ...., of the other part, to make a just award according to the best of your understanding.

*Another Form, in Writing.*

We, the undersigned arbitrators, appointed by and between .... and ...., do swear that we, respectively, will faithfully and fairly hear and examine the allegations and evidence of the said parties in relation to the matters in controversy between them, and will make a just award therein, according to the best of our understanding.

Sworn to, this .... day of ...., 18.., before me, .....

Justice of the Peace

*Subpena on Arbitration.*

..... County, } ss.

The People of the State of California, to ...., and ...., greeting:

We command you, and each of you, personally, to appear and attend at the house of ...., in the town of ...., in said county, on the .... day of

.... instant, at .. o'clock in the .... of that day, before ..... ,  
and ..... , arbitrators chosen to determine a controversy [or, "certain  
matters in controversy"], between ..... and ..... , whereof the sub-  
mission is on file in this court, then and there to testify in relation thereto  
before said arbitrators, on the part of the said ..... Hereof fail not at  
your peril.

Witness, Hon. .... , judge of the district court of the .... judicial  
district in and for the county of ..... and the seal of said court, this ....  
day of ...., 18..

[L.S.]

Clerk.

*Oath of Witness before Arbitrators.*

You do solemnly swear [or "affirm"] that the evidence you shall give to  
the arbitrators here present, on a controversy [or, "on certain matters in  
controversy"], between ..... and ..... , shall be the truth, the whole  
truth, and nothing but the truth : So help you God.

*Revocation by both Parties.*

To ..... , and ..... , Esquires:

Take notice, that we do hereby revoke your powers as arbitrators under the  
submission made to you by us in writing, and entered as an order of the ....  
district court [or, as the case may be], on the .... day of ... 18..

.....  
.....

*Notice of Revocation by one Party (the Submission not having been entered as an Order of Court).*

To ..... :

You are hereby notified, that I have this day revoked the powers of ....  
..... and ..... , arbitrators chosen to settle the matters in con-  
troversy between us; and that the following is a copy of such revocation: [In-  
sert the revocation, made by one of the parties only].

Dated the .... day of ...., 18.. Yours, etc., .....

*Award.*

In the matter of the arbitration of certain matters }  
in difference between ..... , on the one }  
part, and ..... on the other.

Know all men, that ..... , ..... , ..... , to whom were submit-  
ted, as arbitrators, the matters in controversy existing between ..... , of,  
etc., and ..... , of, etc., as by their submission in writing, and bearing  
date the .... day of ...., A.D. 18.., more fully appears: Now, having been  
first duly sworn according to law, and having heard the proofs and allegations  
of the parties, and examined the matters in controversy by them submitted,  
do make this award in writing: that is to say, the said ..... shall make,  
execute and deliver, to the said ..... , on or before the .... day of ....  
instant, a good and sufficient assignment of a certain bond and mortgage ex-  
ecuted, etc., to the said ..... , etc., and the said ..... shall pay, or  
cause to be paid, to the said ..... , the sum of .... dollars, immediately

upon the execution and delivery of the said assignment; [or, "the said . . . . shall pay or cause to be paid, to the said . . . . ., the sum of . . . . dollars, within . . . . days from the date hereof, in full payment, discharge and satisfaction, of and for all moneys, debts and demands, due or owing from him, the said . . . . . to the said . . . . .;" or, "the said . . . . . shall henceforth forever cease to prosecute a certain suit commenced by him, against the said . . . . ., in the district court of, etc., now pending and undetermined in the said court; and the said . . . . . shall pay, or cause to be paid, to the said . . . . ., on or before the . . . . day of, etc., the sum of . . . . dollars, in full satisfaction of the costs, charges and expenses, incurred by the said . . . . ., in and about the prosecution of his suit, as aforesaid"]. And we do further award, adjudge and decree, that the said . . . . . and . . . . . shall, and do, within . . . . . days next ensuing the date hereof, seal and execute unto each other, mutual and general releases of all actions, cause and causes of action, suits, controversies, claims and demands whatsoever, for or by reason of any matter, cause or thing, from the beginning of the world down to the date of the said submission.

In witness whereof, we have hereunto subscribed these presents, this . . . . day of . . . ., one thousand-eight hundred and . . . .

In presence of

.....

.....  
.....  
.....

#### *Another Form of Award.*

To all whom these presents shall come, . . . . ., of . . . ., . . . . ., of . . . . and . . . . ., of . . . ., send greeting :

Whereas, divers suits, disputes, controversies and differences, have happened and arisen, and are now depending, between . . . . ., of . . . ., and . . . . ., of . . . ., for pacifying, composing and ending whereof, the said . . . . . and . . . . . have bound themselves each to the other, in the penal sum of . . . . . dollars, by several bonds or obligations, bearing date . . . . last past, before the date hereof, with condition thereunder written, to stand to, obey, abide, perform and keep, the award, order, arbitrament, final end and determination, of the said . . . . ., . . . . . and . . . . ., arbitrators indifferently named, elected and chosen, as well on the part and behalf of the said . . . . . as of the said . . . . ., to arbitrate, award, adjudge and determine, of and concerning all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever, at any time or times theretofore had, made, commenced, sued, prosecuted or depending, by or between the said parties, or either of them, so as the said award should be made in writing, under the hands and seals of the said arbitrators, or any two of them, ready to be delivered unto the said parties, or such of them as should require the same, on or before the . . . . day of this instant, . . . ., as by the said obligations and conditions thereof it doth and may appear: Now know ye, that the said . . . . ., . . . . . and . . . . ., taking upon them the charge and burden of the said award, and having deliberately heard the allegations and proofs of both the said parties, do, by these presents, arbitrate, award, order, decree and adjudge, of and concerning the premises, in manner and form following; that is to say:



1st. They do award, order, decree and adjudge, that the said . . . . . or his heirs, shall and do, on or before the . . . . day of . . . . next ensuing the date hereof, make and execute a good and sufficient conveyance of his interest, as lessee for years, of a certain farm in the possession of the said . . . . ., situate . . . . , pursuant and according to the true intent and meaning of certain articles of agreement, bearing date on or about the . . . . day of . . . . , and made between the said . . . . ., of the one part, and the said . . . . ., of the other part, or as near the same as the present circumstances will admit.

And also, the said arbitrators do further award, decree and adjudge, that the said . . . . ., his executors or administrators, shall and do, on or before the . . . . day of . . . . next ensuing the date hereof, pay, or cause to be paid, unto the said . . . . ., his executors or administrators, at, or in the now dwelling-house of the said . . . . ., in . . . . aforesaid, the sum of . . . . . dollars, in full payment, discharge and satisfaction, of and for all moneys, debts, duties, due or owing unto the said . . . . ., upon any account whatsoever, at any time before their entering into the said bonds of arbitration, as aforesaid.

And also, the said arbitrators do hereby further award, order, decree and adjudge, that all actions and suits commenced, brought or depending, between the said . . . . . and . . . . ., for any matter, cause or thing, whatsoever, arising or happening at the time of or before their entering into the said bonds of arbitration, shall, from henceforth, cease and determine, and be no further prosecuted or proceeded in by them, or either of them, or by their or either of their means, consent or procurement.

And lastly, the said arbitrators do hereby further award, order, adjudge and decree, that the said . . . . . and . . . . . shall and do, within the space of two days next ensuing the date of this present award, seal and execute unto each other mutual and general releases of all actions, cause and causes of actions, suits, controversies, trespasses, debts, duties, damages, accounts, reckonings and demands whatsoever, for or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of the said bonds of arbitration, as aforesaid.

In testimony, etc., [ as in Certificate of Magistrate, etc. ]

*Release to be Executed by Party to an Arbitration, when required in the Award.*

Know all men by these presents, That I, . . . . ., of the . . . . of . . . . , for and in consideration of the sum of . . . . . dollars to me in hand paid by . . . . ., of . . . . , and in pursuance of an award made by . . . . ., . . . . and . . . . ., arbitrators between us, the said . . . . . and . . . . ., and bearing date the . . . . day of . . . . , one thousand eight hundred and . . . . , do hereby release and forever discharge the said . . . . ., his heirs, executors and administrators, of and from all actions, cause and causes of action, suits, controversies, claims and demands whatsoever, for, or by reason of any matter, cause or thing, from the beginning of the world down to the . . . . day of . . . . , one thousand eight hundred and . . . . . [Insert the date of the submission.]

In witness whereof, I have hereunto set my hand and seal, this . . . . day of . . . . , 18.. . . . . [L.s.]

In presence of . . . . .

## ARREST.

**Arrest.**—To stay to stop; to deprive a person of his liberty by legal authority. The seizing a person and detaining him in the custody of the law. See **MAGISTRATE**.

## ARREST OF DEBTOR.

## CALIFORNIA.

**No person shall be arrested in a civil action, except as prescribed as follows:**

**Cases in which Arrests may be Made.**—The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this Act:\*

\* Statutes of 1850, 407.

*An Act for the Relief of Persons Imprisoned on Civil Process.*—Passed April 22d, 1850.

1st. *Every person* confined in jail, on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

2d. *Such person* shall cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the judge of the district court of the county in which such person may be confined; or, in case of his absence or inability to act, to the judge of the county court of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

3d. *Such notice* shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application, in cases where the plaintiff, his agent or attorney, lives within twenty miles of the place of hearing: and one day shall be added for every additional twenty miles that such person may reside from the place of hearing.

4th. *At the time and place* specified in the notice, such person shall be taken before such judge, who shall examine him under oath concerning his estate, and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor.

5th. *The plaintiff* in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by him, be proposed and answered in writing; and the answer shall be signed and sworn to by the prisoner.

6th. *If, upon the examination*, the judge shall be satisfied that the prisoner is entitled to his discharge, such judge shall administer to him the following oath, to wit: "I do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being

1st. *In an action for the recovery of money or damages, on a cause of action arising upon a contract express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors, or when the action is for willful injury to person, to character or to property, knowing the property to belong to another.*

2d. *In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in office,*

taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors: So help me God."

7th. *After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer, upon the service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.*

8th. *If such judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceeding shall thereupon be had.*

9th. *The prisoner, after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted of having willfully sworn falsely upon his examination before the judge, or in taking the oath before prescribed.*

10th. *The judgment against any prisoner, who is discharged as aforesaid, shall remain in full force against any estate which may then, or at any time afterwards, belong to him; and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.*

11th. *The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.*

12th. *Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, shall advance to the jailor, within twenty-four hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which he may be imprisoned; and in case the money should not be so advanced, or if, during the time the prisoner may be in confinement, the money should be expended in the support of such prisoner, and the creditor should neglect, for twenty-four hours, to advance such further sum as might be necessary for his support, the jailor shall forthwith discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the creditor.*

or in a professional employment, or for a willful violation of duty.

3d. *In an action to recover possession of personal property, unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff.*

4th. *When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention or conversion, of which the action is brought.*

5th. *When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.* [Same in Idaho, except no female shall be arrested, except for an injury to person, character or property. Nevada and Arizona same as California.]

**Order for Arrest.**—An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought, or from a county judge. [Same in Idaho, except probate judge makes the order. Nevada and Oregon the same as California, except there are no county judges in Nevada.]

**Affidavit and Content.**—The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned aforesaid. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the county. [Same in Idaho, Arizona and Nevada, except the affidavit is filed with the clerk of the court.]

**Security to be given by Plaintiff.**—Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs

and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder, within the state, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court. [Same in Idaho, Arizona and Nevada.]

**Order and Form.**—The order may be made to accompany the summons, or any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending. [Same in Idaho, Arizona and Nevada.]

**Duty of Sheriff.**—The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him the copy of the affidavit, and also, if desired, a copy of the order of arrest. [Same in Idaho, Arizona and Nevada.]

**Arrest, how Made.**—The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

**Defendant to be Discharged on Bail or Deposit.**—The defendant at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest. [Same in Idaho, Nevada and Arizona.]

**Bail, how Given.**—The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the Court during the pendency of the action, and to such as

may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action. [Same in Idaho, Nevada and Arizona.]

**Surrender of Defendant.**—At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender him to the sheriff of the county where he was arrested. [Same in Idaho, Arizona and Nevada.]

**Surrender of Defendant.**—For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *provided*, such arrest, delivery or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery or surrender, be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter. [Same in Idaho, Arizona and Nevada.]

**Bail, how proceeded Against.**—If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment. [Same in Idaho, Arizona and Nevada.]

**Qualification of Bail.**—The qualification of bail shall be as follows:

1st. *Each of them* shall be a resident and householder or freeholder, within the county.

2d. *Each shall be worth* the amount specified in the order of arrest, or the amount to which the order is reduced, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or county clerk, on justification, may allow more than two sureties

to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail. [Same in Idaho, Nevada and Arizona.]

**Deposit of Money with Sheriff.**—The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody. [Same in Idaho, Nevada and Arizona.]

**Motion to vacate Order of Arrest, or reduce Bail and Affidavits on Motion.**—A defendant arrested may at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made. [Same in Idaho, Nevada and Arizona.]

**When the Order Vacated or Bail Reduced.**—If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced. [Same in Idaho, Nevada and Arizona.]

#### OREGON.

**When Defendant may be Arrested.**—The defendant in an action at law may be arrested in the following cases:

1st. In actions for the recovery of money or damages due on contracts when the defendant is a non-resident of the state, or is about to remove therefrom, or when the action is for an injury to person or character, or for injuring or wrongfully taking, detaining or converting property.

2d. In an action for a fine or penalty, or on a promise

to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker or other person, in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3d. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found and taken, or with the intent to deprive the plaintiff of the benefit thereof.

4th and 5th. The same as in California.

In Oregon, a woman shall not be arrested in civil actions except for an injury to person, character or property. In California, a woman may be arrested the same as a man in actions in the district courts; but a woman shall not be arrested in actions in justices' courts. See JUSTICES' COURTS.

The Law of Oregon, in other respects, is substantially the same as in California.

#### FORMS.

*Affidavit for Order of Arrest.—Departing out of State with Intent to Defraud Creditors.*

In the District Court of the ..... Judicial District of the State of California,  
in and for the ....., county of .....

..... Plaintiff, against ..... Defendant.	}	AFFIDAVIT FOR ORDER OF ARREST.—Departing out of State, with Intent to Defraud Creditors.
---	---	---

....., being duly sworn, says that he is the plaintiff in the above-entitled action; that the cause of action in this case arose after the passage of the act of the legislature of the state of California, entitled "An act to regulate proceedings in civil cases in the courts of justice of this State," passed April 29, 1851. That it is an action for the recovery of money or damages, on a cause of action arising upon an express contract, and that the defendant in said action is about to depart from this state with the intent to defraud his creditors.

And affiant further states and shows the following facts and circumstances



in support of the above allegations of fraud, to wit: [Facts and circumstances].

Subscribed and sworn to before me, this .... day of .... A.D. 18..

County Clerk.

*Affidavit for Order of Arrest—Fraudulent Debtor.*

In the district court of the .... judicial district of the state of California, in  
and for the .... county of .....

.....  
.....  
Plaintiffs,  
against  
.....  
Defendant. }

...., being duly sworn, says, that he is one of the plaintiffs in the above-entitled action; that the cause of action in this case arose after the passage of the act of the legislature of the state of California, entitled "An act to regulate proceedings in civil cases in the courts of justice of this state," passed April 29th, 1851. That it is an action for the recovery of money or damages, on a cause of action upon an implied contract, and that defendant in said action has been guilty of fraud in contracting the debt and incurring the obligations for which the said action is brought.

And affiant further states and shows the following facts and circumstances in support of the above allegations of fraud, to wit: [Facts and circumstances].

Subscribed and sworn to before me, this .... day of .... A.D. 18..

County Clerk.

*General Affidavit for Order of Arrest.*

State of California,  
In the district court of the .... judicial district. {  
..... et al.  
against  
..... }

.... one of the plaintiffs in this suit, being duly sworn, deposes and says, that the cause of action in this case arose after the passage of the act of the legislature of the state of California, entitled "An act to regulate proceedings in civil cases of the courts of justice of this State," passed April 29th, 1851. That it is an action for the recovery of money or damages, in a cause of action arising upon an express contract, and that the defendant is about to depart from this state with the intent to defraud his creditors [or set out other ground of arrest as prescribed by the statute].

And deponent further states and shows to the court the following facts and circumstances in support of the above allegations of fraud, that is to say: [Here set out the facts, etc.].

Sworn to before me this .... day of .... A.D. 18..

Deputy Clerk.

*Undertaking on Arrest.*

In the district court of the .... judicial district of the state of California, in  
and for the .... county of .....

..... Plaintiff,  
against  
..... Defendant. }

Whereas, in a certain action in the district court of the .... judicial district of the state of California, in and for the .... county of ....., wherein .... is plaintiff, and .... defendant, an order was duly made and delivered to the sheriff of the .... county of ....., requiring him forthwith to arrest the said defendant, and hold ..... to bail, in the sum of ..... dollars; and the said sheriff having arrested the said defendant and taken ..... into custody by virtue of the said order:

Now, therefore, we ....., residing at the ....., in the county of ....., by occupation a ....., and ....., residing at ....., in the county of ....., by occupation a ....., are jointly and severally bound in the sum of ..... dollars, the amount in the said order of arrest mentioned, that the said defendant shall at all times render .... amenable to the process of the said court during the pendency of the said action, and to such as may be issued to enforce the judgment therein; or, that we will pay to the said plaintiff the amount of any judgment which may be recovered in the said action.

Dated the .... day of .... A.D. 18..

[Sureties must justify as in other undertakings. See ATTACHMENT.]

*Order of Arrest.*

In the district court of the .... judicial district of the state of California, in  
and for the .... county of ....

..... Plaintiff,  
against  
..... Defendant. }

The people of the state of California, to the sheriff of the .... county of .....

The above-named plaintiff having commenced an action in the district court of the .... judicial district of the state of California, in and for the .... county of ....., against the above-named defendant, and it duly appearing to me, from affidavits submitted on the part of the said plaintiff, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-three of the act, entitled "An act to regulate proceedings in civil cases in the courts of justice of this state," passed April 29th, 18.., to wit:

That the said defendant has been guilty of fraud in contracting the debt for which the said action is brought, and the necessary undertaking having been given, I, the undersigned, judge of the said district court, by virtue of the authority in me vested by law, do order and require you, the said sheriff of the .... county of ....., forthwith to arrest the said defendant, if .... may be found in your county, and hold .... to bail in said action, in the sum of

## ARREST OF DEBTOR, FORMS OF—ARREST OF JUDGMENT. 55

..... dollars, and that you return this order, with your proceedings thereon, to the clerk of the said district court, on the .... day of .... A.D. 18..

Dated the .... day of .... A.D. 18..

.....  
Judge of said .... District.

*Proceedings to obtain Discharge from Imprisonment under Civil Process.*

### NOTICE.

.....  
vs. } In the district court of the .... judicial district, .... county  
..... } of .....

To ....., the plaintiff above named:

You will take notice, that I will apply to the Hon. .... judge of the district court of the .... judicial district, in and for the .... county of ....., in the court-room of said court, in the city hall of said .... county, on ..... the .... day of .... A.D. 18., at .... o'clock of that day, or as soon thereafter as counsel can be heard, for the purpose of obtaining a discharge from imprisonment, under the provisions of the act of April 22d, 1850, for the relief of persons imprisoned on civil process. Respectfully yours,

.....  
Defendant.

### *Oath of Imprisoned Debtor.*

I, ....., do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempt from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors: So help me God. ....

### *Order for Discharge.*

.....  
vs. } [Title of court as in notice.]  
..... }

Application having been made to me by ....., the defendant above named, to be discharged from imprisonment under the provisions of the act of April 22d, 1850, for relief of persons imprisoned under civil process, and the said .... being by me examined under oath, concerning his property and his ability to pay the judgment for which he is committed, and it appearing to me that the said .... is entitled to his discharge from imprisonment, it is therefore ordered that the said .... be discharged from custody, if he is imprisoned for no other cause.

[Date.]

.....  
Judge of the District Court, .... Judicial District.

## ARREST OF JUDGMENT.

**Arrest of Judgment.**—The act of a court, by which the court refuses to give judgment, because upon the face of the record or proceedings the plaintiff is not entitled to it.

**A Motion**, in arrest of judgment, is addressed to the court before which the action has been tried, and is based on the record.

## ARSON.

**Arson**.—The malicious burning of a house of another. See **CRIMES AND PUNISHMENTS**.

## ARTICLES OF PARTNERSHIP.

**Articles of Partnership**.—A written agreement by which parties enter into a partnership upon the conditions therein mentioned. See **PARTNERSHIP**.

## ASSAULT.

**Definition of Assault**.—By the laws of California, "An assault is an unlawful attempt, coupled with the present ability, to commit a violent injury on the person of another; and every person convicted thereof, shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not exceeding three months." It is safe to say that the foregoing is law everywhere, with the exception of the punishment inflicted, which is different in different states. It is also substantially the same at common law.

**What Constitutes**.—To constitute an assault, the defendant must intend to strike, have the ability to strike, and must make the attempt. An attempt to do violence accompanied by acts which, avoided by the other party, would, in the usual course of crime be followed by violence, amounts to an assault; and in no case is it necessary that a blow should be given to constitute this offense, nor is it always necessary that the assailant should be at any time within striking distance.

**Intention and Acts**.—Drawing a pistol and pointing it at another, shaking the closed hand or striking at another, and in short, doing any act which, if not prevented or avoided in some way, would amount to a battery, is an

assault. If A strikes or frightens a horse which B is riding or driving, with intent to cause it to run away [and we may here observe that in most cases the intent is judged by the act], it is an assault; and if the horse does run away and injures B, it is an assault and battery.

**Repelling Assaults.**—In repelling an assault, the person assailed must beware or he too will lay himself liable. He should use no more force than is absolutely necessary [and it is for a jury to say whether he did or not]; and if he does, he becomes himself the aggressor, and must answer to the offended law. We must not be understood as recommending a person on whom an assault is committed to consult a lawyer before he repels it. He must resist on the spot, *instantly*, or he must not resist at all.

## ASSAULT AND BATTERY.

CALIFORNIA, IDAHO, NEVADA AND OREGON.

**Assault and Battery.**—By California law, "Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year."

**At Common Law.**—The common law is substantially the same, and so is the law of the several States. Every battery includes an assault; and, on the same principle, the greater crime always includes the less of the same nature. Assault and battery is nothing more than perfected assault, as the object of the assault is carried out in the battery. Therefore, what we have said under the head "Assault," comes aptly in this place, and which see. A mere touch of the person, in an angry, rude or threatening manner, constitutes the offense as well as a violent blow. The two batteries only differ in degree.

**Repelling Assault and Battery.**—The same caution must be observed here as in cases of assault, and no more force should be used than is absolutely necessary to repel the assailant. See ASSAULT.

## ASSAYER.

## CALIFORNIA.

**Assayer of State.**—The governor, by and with the advice and consent of the senate, may appoint a person skilled in the art of assaying ores and metals, to be state assayer, who shall hold office for two years. He shall give a bond for the faithful performance of his duties, in the sum of fifty thousand dollars.

**Duty of Assayer.**—It is his duty to assay such ores and metals as shall be offered to him for that purpose. He is not allowed to charge greater fees than are charged in the United States mint for similar services. He is allowed two dollars for attaching his official seal to his certificate.

## ASSESSMENT.

**Assessment.**—Determining the value of a man's property or occupation, for the purpose of levying a tax. Determining the share of a tax to be paid by each individual.

**Of Damages.**—Fixing the amount of damages to which the prevailing party in a suit is entitled.

## ASSIGNMENTS.

## CALIFORNIA, OREGON, NEVADA AND IDAHO.

**Assignments, when Valid.**—An assignment is the transfer of some interest or claim in or to any estate, property or thing, to another. It must be made in good faith. And any party interested in testing its validity can do so in an action; if it can be shown that the assignment was made to evade debts due to creditors, it will be set aside.

**By Debtor.**—An assignment by a debtor for the benefit of his creditors must be an unconditional surrender of all his effects. If he secretly hold back any property, such withholding is fraudulent.

**An Assignment by an Insolvent debtor, in trust to pay**

certain creditors, who are to transfer the residue to the debtor, is void as to the remaining creditors; and evidence that there would be no surplus will not render it valid.

**All Assignments.** for the benefit of creditors, must be accompanied by immediate delivery of the property.

**What Constitutes.**—In general delivery of the thing assigned, is sufficient to pass the title to the assignee; but it is always best to have assignments evidenced by writing, signed by the assignor. The person assigning is the *assignor*. The person to whom the thing is assigned is the *assignee*. No particular form of words is necessary.

**Effect of, Etc.**—Assignments place the absolute title to the thing assigned [without the assignment is to a trustee for a particular purpose] in the assignee, who must sue in his own name; and the assignee takes the thing assigned subject to any set-off, or other defense existing at the time of, or before notice of, the assignment; but this rule does not apply to a negotiable promissory note, or bill of exchange, transferred in good faith and upon good consideration, before due.

**When Void.**—Every assignment, in writing or otherwise, of any estate or interest in lands, or of goods in action, or of any rents or profits issuing therefrom, made with intent to hinder, delay or defraud, creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, is void.

**Same.**—Every assignment, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, is void against the creditors, existing or subsequent, of such person.

**Interest in Land.**—When any interest in land, excepting leases for one year or less, or any trust or power over or concerning lands, or in any manner relating thereto, is assigned, the assignment must be in writing, signed and sealed by the party assigning, or by his agent, lawfully authorized in writing.

**Of Goods and Chattels.**—Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud, as against the creditors of the vendor or assignor, or subsequent purchasers in good faith; except in cases of contracts of bottomry, respondentia or assignments, or hypothecations of vessels or goods at sea, or in foreign states, or out of the state, provided possession of such vessel or goods be changed as soon as may be after their arrival.

**Assignment of Stock.**—Transfers of stock in a corporation, to be valid as against third parties, must be entered in the books of the company, so as to show the names of the parties, by whom and to whom transferred, the number and designation of the shares, and the date of the transfer.

#### FORMS.

##### *Simple Form of Assignment, to be Indorsed upon an Instrument.*

In consideration of the sum of ..... dollars to me in hand paid, by ...., of, etc., the receipt whereof is hereby acknowledged, I do hereby transfer, assign and set over, to the said ...., his heirs and assigns forever, all my right, title or interest, in and to the within instrument.

Witness my hand and seal, this .... day of .... 18..

..... [L.S.]

In presence of ..... ..

##### *Assignment of Bond.*

Know all men by these presents: That I, ...., of, etc., of the first part, for and in consideration of the sum of ..... dollars, lawful money of the United States of America, to me in hand paid by ...., of, etc., of the second part, the receipt whereof is hereby acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, a certain written bond or obligation, and the condition thereof, bearing date the .... day of ...., one thousand eight hundred and ...., executed by .... to the said ...., and all sum and sums of money due or to grow due thereon. And I hereby covenant with the said party of the second part, that there is now due on the said bond or obligation, according to the condition thereof, for principal and interest, the sum of ..... dollars.

In witness, etc.

..... ..



*Assignment of Note and Mortgage.*

Mortgage dated the .... day of ...., etc., executed by ...., and .... his wife, to ...., on certain premises described therein, being part of ...., lot No. ...., in the .... county of ...., recorded in the office of the recorder of said county, in book No. .... of mortgages, pages ...., etc.

Note bearing date the day aforesaid, executed by .... to ...., aforesaid, in the sum of ..... dollars, secured by the above mortgage, on the .... day of ...., 18.., with interest at .... per cent. per month.

In consideration of ..... dollars, to me paid, by ...., of, etc., I do hereby assign, transfer and set over, unto the said ...., the mortgage above described, and the note accompanying the same, as aforesaid, for his use and benefit; hereby authorizing him to collect and enforce payment thereof, but at his own costs and charges. And I do hereby covenant that the sum of ..... dollars, with interest from the .... day of .... last past, is now due and owing on the said bond and mortgage, and that I have good right to sell and assign the same.

In witness, etc.

.....

*The Same, Indorsed on Mortgage.*

In consideration of ..... dollars, to me in hand paid, by ...., of, etc., I do hereby sell, assign, transfer and set over, unto the said ...., the within indenture of mortgage, together with note accompanying the same, for his use and benefit.

Witness my hand and seal, etc.

..... [L.S.]

[Of Book Accounts—Same as in Assignment of Bond.]

*Assignment of the Partnership Property by one Partner to the other, to wind up the Concern.*

This indenture, made this .... day of ...., one thousand eight hundred and ...., between ...., of the ...., of ...., in the county of ...., and state of ....., and ...., of the same place.

Whereas, a copartnership has heretofore existed between the said .... and ...., under the style and name of .... & ...., which said copartnership has been this day dissolved by mutual consent:

Now, therefore, this indenture witnesseth, that the said .... has sold, assigned, transferred and set over, and by these presents does sell, transfer, assign and set over, unto the said ...., his half part of all the goods, wares, merchandise, property and effects, and stock in trade, belonging to the said copartnership, and also all the accounts, notes, bills, bonds, things in action, claims and demands, due and owing to the said firm.

To have and to hold the same unto himself and his assigns, in trust to sell the said property and effects in such manner as he may think proper, but not on a longer credit than .... days, and to collect, demand, sue for and receive, all sums of money due or to become due upon the said bills, notes, bonds, accounts, claims and demands, and with the moneys thus collected, realized and obtained, to pay off and discharge all the debts and obligations of the said firm, if the same shall be sufficient therefor, and of the balance, if there

shall be, after satisfying all the claims and demands against the said firm, to pay over the one-half part to the said ..... or his legal representatives.

And the said ..... doth hereby make, constitute and appoint, the said ..... his true and lawful attorney, irrevocable, in the name of the late firm or otherwise, to sell the said property and effects of the late firm, and all the interest of the said ..... in and to the same; and also ask, demand, sue for, collect and receive, any and all debts, claims and demands, due or to become due and owing to the said late firm, to compound the same and prosecute suits for the recovery thereof in his discretion; to defend any and all suits that may be brought against the said firm; and to make, execute, deliver and acknowledge, all necessary deeds, conveyances, releases, receipts and discharges, in the premises, and generally to do any and every act and thing requisite and necessary to secure a full, entire, complete and speedy, settlement of all the business and affairs of the late firm of .... & ....., hereby ratifying and confirming any and every thing which the said ..... may lawfully do in the premises.

And the said ....., for himself, his heirs, executors and administrators, covenants with the said ....., his heirs, executors and administrators, that he will sell the aforesaid property to the best of his ability, and for the best price he can obtain therefor; and will use all diligence to collect all the debts, claims and demands, due the said late firm, and that he will faithfully apply the proceeds of such sales and claims in accordance with the above-recited trust.

And the said ....., for himself, his heirs, executors and administrators, covenants with the said ....., that if, after the entire proceeds of said property and effects, claims and demands, of the said late firm have been faithfully applied to the payment of the debts, liabilities and obligations, of the said late firm, there shall remain any debt or liability unsatisfied, that then he, the said ....., his heirs, executors or administrators, will pay and satisfy the moiety or one-half part of any and every such debt or liability, and the said ....., his heirs, executors or administrators, from the one-half part thereof, save harmless and keep indemnified.

In witness whereof, etc.

[Signed]

.....  
.....

#### *Another Form of Assignment of Partnership Property and Debts.*

BY ONE PARTNER TO ANOTHER, IN TRUST, TO CLOSE THE CONCERN.

Whereas, a copartnership has heretofore existed between ..... and ..... both of the city of ...., which copartnership has been known under the name of ..... and ....., and which it is the intention of the said copartners forthwith to dissolve and determine:

Now, this indenture of two parts, made this .... day of ...., in the year ....., by and between the said ..... of the one part, and the said ..... of the other part, witnesseth:

1st. That the copartnership aforesaid is hereby, by the mutual consent of the said parties, dissolved and determined.

2d. The said ..... doth hereby sell, transfer, assign and set over, unto

the said . . . . ., his moiety of all the stock in trade, goods, merchandise, effects and property, of every description, belonging to or owned by the said copartnership, wherever the same may be, together with all debts, causes in action and sums of money, due and owing to the said firm from any and all persons whomsoever, to hold the same to the said . . . . . and his assigns forever, in trust for the following purposes, namely: that the said . . . . . shall sell and dispose of all the goods, property and effects, belonging to the said firm, at such time and in such manner as he may think prudent; and shall, with reasonable diligence, collect all the debts and sums of money due and owing to the said firm; and shall, out of the proceeds of the said sales, and with the money thus collected, pay and discharge all the debts and sums of money now due and owing from the said firm, as far as the proceeds of said sales and the sums of money collected will go; and, after fully satisfying all demands against the said firm, if there be any surplus, shall pay over one moiety thereof to the said . . . . . or his assigns.

3d. The said . . . . . doth hereby constitute and appoint the said . . . . . his attorney irrevocable, in his, the said . . . . . 's own name, or in the name of the said firm, to demand, collect, sue for and receive any and all debts and sums of money due and owing to the said firm; to institute and prosecute any suits for the recovery of the said debts, or to compound the same, as he may judge most expedient; to defend any and all suits against the said firm; to execute all such papers, writings and acquittances, as may be necessary; and generally do all such acts and things as may be necessary or proper for the full and complete settlement of all business and concerns of the said copartnership.

4th. The said . . . . ., for himself and his heirs, executors and administrators, hereby covenants to and with the said . . . . . and his assigns, that he will sell and dispose of all the partnership property and effects to the best advantage; that he will use his best diligence and endeavors to collect all debts and sums of money due and owing to the said firm; and that he will truly and faithfully apply the proceeds of said sale and the moneys collected, to the payment, discharge and satisfaction, of all debts and demands against the said firm, as far as the same will go; and, after discharging all such debts, will pay over to the said . . . . ., or his assigns, one moiety of any surplus that may remain; and further, that he will keep full and accurate accounts of all moneys received by him for goods sold, or debts collected, as well as of moneys paid out, and will render a just, true and full account therefor to the said . . . . .

5th. The said . . . . ., for himself, etc., covenants to and with the said . . . . ., etc., that, upon settlement of accounts, if it shall be found that the debts due and owing from the said firm exceed the amount of moneys received from the sale of the said goods and the debts collected, he will pay unto the said . . . . ., or his assigns, one moiety of any balance that may then be due and owing from the said firm.

In testimony whereof, etc., [as in General Form of Assignment].

*Assignment of Partnership Property and Debts by one Partner to another for a certain Sum.*

This indenture of two parts, made and concluded this . . . day of . . ., in

the year of . . . . , by and between . . . . ., of . . . . ., printer, of the first part, and . . . . ., of . . . . ., printer, of the second part, witnesseth:

That, whereas, the said parties were lately copartners in the business of printing, which partnership was dissolved and determined on the . . . day of . . . last; and whereas, many debts, due and owing to the said parties on account of their said copartnership, are still outstanding, and debts due by the said firm are yet unpaid; and whereas, it is agreed that the said party of the second part shall assign and release to the said party of the first part all his interest in the stock in trade, goods and effects, belonging to the said firm, and in the debts now owing to the said firm, and that the said party of the first part shall assume all the debts and liabilities of the said firm, and shall discharge and indemnify the said party of the second part from all liabilities and losses arising from the said partnership:

Now, therefore, in pursuance of the said agreement, and in consideration of the sum of . . . . , paid and secured to the said . . . . ., he, the said . . . . ., doth hereby fully and absolutely sell, assign, release and make over, to the said . . . . . all his right, title, interest and share, in and to all stock in trade, goods, merchandise, machinery, tools, books, leasehold premises and effects, belonging to the said partnership, of whatever kind or nature and wheresoever situated; also, all his right, title and interest, in and to all the debts and sums of money now due and owing to the said firm, whether the same be by bond, bill, note or account, or otherwise; and the said . . . . . doth hereby make and appoint the said . . . . ., his executors, administrators and assigns, to be his attorney and attorneys, to receive all and several the debts and sums of money above mentioned, to his and their own use and benefit; and doth hereby authorize the said . . . . ., his executors, etc., to demand, collect and sue for, the said debts and sums of money, and to use his the said . . . . 's name in any way or manner that the collection, recovery and realization, of the said debts and demands may render necessary, as well in court as out of court, but at their own proper costs and charges, and without cost or damage to the said . . . . . And the said . . . . . doth hereby further authorize the said . . . . . to convey and transfer to his own name, and for his own use and benefit, any and all sums of money and effects, real and personal estate, which may be taken or received in the name of the said firm, and to hold the same free from all claims of the said . . . . ., his executors, administrators or assigns.

And these presents further witness, that, in pursuance of the said agreement, the said . . . . ., for himself, his executors and administrators, doth hereby covenant to and with the said . . . . ., his executors and administrators, that he, the said . . . . ., and his, etc., shall pay and discharge, and at all times hereafter save harmless and indemnify the said . . . . ., his, etc., from and against all and every the debts, duties and liabilities, which, at the dissolution and termination of the said partnership, were due and owing by the said firm to any person or persons, for any matter or thing touching the said partnership, and of and from all actions, suits, costs, expenses and damages, for, or concerning the said debts, duties and liabilities, unless the said . . . . . shall have contracted any debts or incurred any liabilities, in the name and on account of the said firm, which are unknown to the said . . . .

... , and do not appear in the books of the said firm; for which, if any such exists, the said . . . . . does not hereby intend to make himself responsible.

In testimony whereof, etc., [as in General Form of Assignment].

*Assignment of a Bond by Indorsement.*

Know all men by these presents, that I, the within named . . . . ., for and in consideration of the sum of . . . . , to me paid by . . . . ., of . . . . ., at or before the sealing of these presents (the receipt whereof is hereby acknowledged), have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said . . . . ., his executors, administrators and assigns, the within written bond or obligation, and the sum of . . . . , mentioned in the condition thereof, together with all interest due and to grow due for the same, and all my right, title, interest, claim and demand, whatsoever, of, in and to, the same. And I authorize the said . . . . . to demand, sue for, receive, have, hold and enjoy, the said sum of . . . . , and interest, to his own use absolutely forever.

In testimony, etc., [as in General Form of Assignment].

*Assignment of Judgment—Full Form.*

In consideration of the sum of . . . . hundred and . . . . dollars, lawful money of the United States of America, to me in hand paid, at or before the en sealing and delivery of these presents, by . . . . ., of the city of . . . . , the receipt whereof is hereby acknowledged, I, . . . . ., of the city of . . . . ., do hereby sell, assign, transfer and set over, to the said . . . . . and his assigns, all my right, title and interest, in and to a certain judgment, recovered by me in the district court of the twelfth judicial district of the State of California, against . . . . ., . . . . . and . . . . ., composing the firm of . . . . & Co., for the sum of . . . . . hundred and . . . . . dollars, besides costs, . . . . dollars, making in all . . . . . hundred and . . . . dollars, on the . . . . day of . . . . , A.D. 18.., and all sum and sums of money that may be had or obtained by means thereof, together with the said judgment. Hereby constituting and appointing the said . . . . . my true and lawful attorney irrevocable, with power of substitution and revocation, for his use and at his cost and charges, to take all lawful ways and means for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction of or discharge the same. Hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal this . . . . day of . . . . A.D. 18.. . . . . [L.S.]

Sealed and delivered in presence of . . . . .

*Assignment of Mortgage and Note—Another Form.*

Know all men by these presents: That I, . . . . ., of the first part, in consideration of the sum of . . . . . dollars, lawful money of the United States of America, to me in hand paid by . . . . ., of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, unto the said party of the second part, a certain

indenture of mortgage, bearing date the ... day of ..., A.D. one thousand eight hundred and ..., made and executed by ... , to the said party of the first part, to secure the payment of the sum of ..... dollars; together with the promissory note or obligation therein described, and the money due or to grow due thereon, with the interest; which said indenture of mortgage is recorded in the office of the recorder of the ... county of ..., in liber ... of mortgages, page ... on the ... day of ..., A.D. 18.., to have and to hold the same unto the said party of the second part, his executors, administrators and assigns, for their use and benefit; subject only to the proviso in the said indenture of mortgage mentioned.

And I do covenant to and with the said party of the second part, that I am the lawful owner and holder of the said note and mortgage, and that I have good right to sell, transfer and assign, the same as aforesaid. And I do hereby covenant to and with the said party, of the second part, that there is now due and owing upon the said note and mortgage, the sum of ..... dollars, with interest from the ... day of ..., A.D. one thousand eight hundred and ....

In witness whereof, I have hereunto set my hand and seal, the ... day of ..., A.D. one thousand eight hundred and ....

Signed, sealed and delivered in the presence of ..... [L.S.]

.....

#### *Assignment of Bond and Mortgage as Collateral Security.*

This indenture, etc., [as in the forms preceding, then add:] But this indenture [or, "this assignment"] is, nevertheless, made upon this express condition, that if the said ... , his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the said ... , his heirs, executors, administrators or assigns, the sum of ..... dollars, on or before the ... day of ..., 18.., with interest from the date hereof, this indenture [or, "this assignment"] shall be void and of no effect; it being made for the purpose of securing the payment of the said sum of ..... dollars, with interest, as aforesaid, and for no other purpose whatever. And in case the said ... , his heirs, executors, administrators or assigns, shall collect and receive the money due on said mortgage hereby assigned, he or they shall, after retaining the sum of ..... dollars, with the interest thereon, and his or their reasonable costs and charges in that behalf expended, pay the surplus, if any there be, to the said ... , his heirs, executors, administrators or assigns.

In witness whereof, the said parties have hereto set their respective hands and seals, the day and year first above written, [or, "the ... day of ..., 18.."]

..... [L.S.]  
..... [L.S.]

Signed, sealed and delivered, in the presence of

.....

#### *Assignment of Judgment—Short Form.*

For and in consideration of one dollar, to me in hand paid, and for professional services rendered me by ... , Esq., I do hereby assign, trans-

fer and make over unto him, all my right, title and interest, in a certain judgment by me obtained against . . . . . in the county court of the . . . county of . . . , and docketed, this . . . day of . . . , A.D. 18. . , for the sum of . . . . . dollars damages, and . . . . . dollars costs.

In witness whereof, I have hereunto set my hand, the day and year last mentioned. . . . . [L.S.]

*The Same, in another Form*

County court, . . . . . county:

..... } Judgment docketed . . . . . 18. . , for . . . . . dollars damages  
against } and . . . . . dollars costs.

For value received, I do hereby assign, transfer and set over, the above mentioned judgment, to . . . . . , for his use, and at his risks, costs and charges, in all respects.

Dated the . . . day of . . . , A.D. 18. . . . . [L.S.]

*Assignment of Judgment.*

This indenture, made the . . . day of . . . , in the year of our Lord one thousand eight hundred and . . . , between . . . . . of the first part and . . . . . of the second part, witnesseth: Whereas, the said party of the first part, on the . . . day of . . . , one thousand eight hundred and . . . , recovered judgment in the district court of the . . . judicial district of the state of California, against . . . . . , for the sum of . . . . . dollars.

Now this indenture witnesseth, that the said party of the first part, in consideration of the sum of . . . . . dollars, to him duly paid, has sold and by these presents does assign, transfer and set over, unto the said party of the second part and his assigns, the said judgment, and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And the said party of the first part does covenant, that there is now due on the said judgment the sum of . . . . . dollars, and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written. . . . . [L.S.]

*Assignment of Lease.*

Know all men by these presents: That I, . . . . . , of, etc., for and in consideration of the sum of . . . . . dollars, lawful money of the United States, to me paid, by . . . . . , of, etc., have sold and by these presents do grant, convey, assign, transfer and set over, unto the said . . . . . , a certain indenture of lease, bearing date the . . . day of . . . , in the year one thousand eight hundred and . . . [when recorded, add the name of the county, the volume and page], made by . . . . . , of, etc., to me, the said . . . . . , of a certain dwelling-house and lot, situate in, etc., with all and singular the premises therein mentioned and described, and the buildings

thereon, together with the appurtenances; to have and to hold the same unto the said . . . . ., his heirs, executors, administrators and assigns, from the . . . . day . . . . next, for and during all the rest, residue and remainder, of the term of . . . . . years mentioned in the said indenture of lease; subject, nevertheless, to the rents, covenants, conditions and provisions, therein also mentioned. And I do hereby covenant and agree, to and with the said . . . . ., that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and incumbrances, whatsoever.

In witness, etc. [as above].

. . . . . [L.S.]

*Assignment of a Debt or Wages.*

Know all men by these presents: That I, . . . . ., of, etc., for and in consideration of the sum of . . . . . dollars, to me paid by . . . . ., of, etc., the receipt whereof is hereby acknowledged, have sold, and by these presents do sell, assign, transfer and set over, unto the said . . . . ., a certain debt due me from . . . . ., amounting to the sum of . . . . . dollars, for goods sold and delivered [or, "work, labor and services]," with full power to sue for, collect and discharge, or sell and assign the same. And I hereby covenant, that the said sum of . . . . . dollars is justly due as aforesaid.

In, witness, etc.

. . . . .

*Assignment of Account Indorsed thereon.*

In consideration of one dollar value received, I hereby sell and assign to . . . . ., the within account which is justly due from the within named . . . . ., and I hereby authorize the said . . . . ., to collect the same.

In witness, etc.

. . . . .

*Assignment of Policy of Insurance.*

Know all men by these presents: That I, . . . . ., of, etc., in the annexed policy named, for and in consideration of the sum of . . . . . dollars to me in hand paid by . . . . ., of, etc., the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto the said . . . . ., the annexed policy of insurance, and all sum and sums of money, interest, benefit and advantage whatsoever, now due or hereafter to arise, or to be had or made by virtue thereof; to have and hold the same unto the said . . . . . and assigns forever.

In witness, etc.

. . . . .

The above assignment is approved.

. . . . ., President [or, "Secretary"],

of the . . . . . Insurance Company.

*Assignment of Policy as Security.*

Know all men, etc. [as in the foregoing to the end, and then add:] upon the condition, however, that if a certain promissory note for the sum of . . . . . dollars, bearing date the . . . . . day of . . . . ., given by the said . . . . ., to the said . . . . ., is well and truly paid, according to the terms thereof, then this assignment is to be void.



In witness whereof, etc., [adding the approval in the foregoing if necessary].

*Assignment of a Seaman's Wages.*

Know all men : That I, . . . . . for and in consideration of the sum of . . . . ., in which I am justly indebted to . . . . ., of, etc., have hereby assigned, sold and set over, and by these presents I do hereby assign, sell and set over, unto the said . . . . ., all sums of money as are now due and owing to me, the said . . . . ., for wages or services on board the ship or vessel called the . . . . ., from the master or owner of said vessel, on board of which vessel I served as a mariner on her voyage from . . . . . to . . . . ., which has recently terminated, with full power to prosecute the said vessel, her tackle, apparel and furniture, freight, cargo, and any and all persons liable therefor, and receive and recover the same, and give discharges therefor.

[Add covenants that A B has not released, and that he will give further assurance.]

In witness whereof, etc.

*General Assignment by an Insolvent Debtor for the Benefit of his Creditors.*

This indenture, made the . . . . . day of . . . . ., eighteen hundred and . . . . ., by and between . . . . ., of . . . . ., merchant, of the first part, . . . . ., of . . . . ., of the second part, and the several persons creditors of the said party of the first part, of the third part, witnesseth:

That whereas, the party of the first part is indebted to divers persons in considerable sums of money, which he is at present unable to pay in full, and he is desirous to convey all his property for the benefit of all his creditors, without any preference or priority other than that provided by law.

Now, the party of the first part, in consideration of the premises, and of one dollar paid to him by the party of the second part, hereby grants, bargains, sells, assigns and conveys, unto the party of the second part, and his heirs and assigns, all his lands, tenements, hereditaments, goods, chattels, property and choses in action, of every name and nature and description, wheresoever the same may be, except such property only as is exempted by law from attachment and execution, as fully described and set forth in the schedule hereto annexed and made a part of this assignment.

To have and to hold the said premises unto the said party of the second part, and his heirs and assigns :

But in trust and confidence, nevertheless, to sell and dispose of the said real and personal estate, and to collect the said choses in action, using a reasonable discretion as to the times and modes of selling and disposing of said estate, as it respects making sales for cash or on credit, at public auction or by private contract, and with the right to compound for the said choses in action, taking a part for the whole, where the trustee shall deem it expedient so to do; then in trust to dispose of the proceeds of the said property in the manner following, viz:

1st. To pay all such debts as by the laws of the United States or of this state are entitled to a preference in such cases.

2d. To pay the costs and charges of these presents, and the expenses of executing the trusts declared in these presents.

3d. To distribute and pay the remainder of the said proceeds to and among all the parties of the third part, ratably, in proportion to their respective debts. And, if there should be any surplus, after paying all the parties of the third part in full, then in trust.

4th. To pay over such surplus to the party of the first part, his executors, administrators or assigns.

And the party of the first part hereby constitutes and appoints the party of the second part his attorney irrevocable, with power of substitution, authorizing him, in the name of the party of the first part or otherwise, as the case may require, to do any and all acts, matters and things, to carry into effect the true intent and meaning of these presents which the party of the first part might do if personally present.

And the party of the second part, hereby accepting these trusts, covenants to and with each of the other parties hereto, to execute the same faithfully.

And the party of the first part hereby covenants with the said trustee, from time to time, and at all times when requested, to give him all the information in his power respecting the assigned property, and to execute and deliver all such instruments of further assurance as the party of the second part shall be advised by counsel learned in the law to be necessary, in order to carry into full effect the true intent and meaning of these presents.

In witness whereof, the said parties have hereto set their hands and seals the day and year first above written.

Sealed and delivered in presence of

.....	..... [L.S.]
.....	..... [L.S.]
	..... [L.S.]

*Assignment by a Debtor to Trustees, for the Benefit of his Creditors. .*

This indenture, made the .... day of ....., eighteen hundred and ....., by and between ...., of ....., merchant, of the first part, .... of ....., of the second part, and the several persons, creditors of the said party of the first part, who have executed or shall hereafter execute or accede to these presents, of the third part, witnesseth:

That whereas, the party of the first part is indebted to divers persons in considerable sums of money, which he is at present unable to pay in full, and he is desirous to convey all his property for the benefit of all his creditors, without any preference or priority other than that provided by law:

Now, the party of the first part, in consideration of the premises, and of one dollar paid to him by the party of the second part, hereby grants, bargains, sells, assigns and conveys, unto the party of the second part, and his heirs and assigns, all his lands, tenements, hereditaments, goods, chattels, property and choses in action, of every name, nature and description, wheresoever the same may be, except such property only as is exempted by law from attachment.

To have and to hold the said premises unto the said party of the second part, and his heirs and assigns:

But in trust and confidence, nevertheless, to sell and dispose of the said real and personal estate, and to collect the said choses in action, using a reasonable discretion as to the times and modes of selling and disposing of

said estate, as it respects making sales for cash or credit, at public auction or by private contract, and with the right to compound for the said choses in action, taking a part for the whole, where the trustee shall deem it expedient so to do; then in trust to dispose of the proceeds of the said property in the manner following, viz:

1st. To pay all such debts as by the laws of the United States or of this state are entitled to a preference in such cases.

2d. To pay the costs and charges of these presents, and the expenses of executing the trusts declared in these presents.

3d. To distribute and pay the remainder of the said proceeds to and among all the parties of the third part, ratably, in proportion to their respective debts [or, if there is a statute regulating the distribution, say:] according to the true intent and meaning of an act, entitled "An act," etc.

And, if there should be any surplus, after paying all the parties of the second part in full, then in trust.

4th. To pay over such surplus to the party of the first part, his executors, administrators or assigns.

And the party of the first part hereby constitutes and appoints the party of the second part his attorney irrevocable, with power of substitution, authorizing him, in the name of the party of the first part, or otherwise, as the case may require, to do any and all acts, matters and things, to carry into effect the true intent and meaning of these presents, which the party of the first part might do if personally present.

And the party of the second part, hereby accepting these trusts, covenants to and with each of the other parties hereto, to execute the same faithfully.

And the party of the first part hereby covenants with the said trustee, from time to time, and at all times when requested, to give him all the information in his power respecting the assigned property, and to execute and deliver all such instruments of further assurance as the party of the second part shall be advised by counsel learned in the law to be necessary, in order to carry into full effect the true intent and meaning of these presents.

And the parties of the third part, by signing and sealing these presents, express their assent to this assignment, and accept the provision for them made herein, pursuant to the statute aforesaid.

In testimony whereof, etc., [as in General Form of Assignment].

#### *Transfer of Stock.*

For and in consideration of the sum of ten thousand dollars to me in hand paid, I do hereby sell, assign and transfer, to ..... , three shares of stock belonging to me, of the "..... Mining Association," of the denomination of ..... thousand dollars each, and being shares numbered respectively, ... , .... and ...., and now standing in my name on the books of said company. And I do guarantee, that all assessments to date are duly paid upon said shares and each of them, and I authorize the secretary or other proper officer of said company, to enter this transfer upon the books of said company, showing that I have this day transferred to said ..... the said three shares of stock of the numbers and designation above mentioned.

Dated the ..... , 18..

## ASSURANCE.

**Assurance.**—Any instrument which confirms the title to an estate. In commercial law, it has the same meaning as insurance. See INSURANCE.

## ATTACHMENT.

IN THE DISTRICT COURTS OF CALIFORNIA, NEVADA AND IDAHO.

**Attachment, when and in what Cases may Issue.**—The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided in the following cases:

1st. In an action upon a contract, express or implied, for the direct payment of money, which contract is made or is payable in this State, and is not secured by a mortgage, lien or pledge, upon real or personal property; or if so secured, that such security has been rendered nugatory by the act of the defendant. [Same in Nevada, except the security must be on property in the State.]

2d. In an action upon a contract, express or implied, against a defendant not residing in this State.

**Affidavit for Attachment, what to Contain.**—The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing:

1st. That the defendant is indebted to the plaintiff [specifying the amount of such indebtedness over and above all legal set-offs or counter claims] upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this State, and that the payment of the same has not been secured by any mortgage, lien or pledge, upon real or personal property.

[Same in Nevada, except the security must be on property in the State.]

2d. That the defendant is indebted to the plaintiff [specifying the amount of said indebtedness, as near as may be, over and above all legal set-offs or counter claims], and that the defendant is a non-resident of the State.

3d. That the sum for which the attachment is asked is an actual, *bona fide*, existing debt, due and owing from the defendant to plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud, any creditor or creditors of the defendant.

**Undertaking on Attachment.**—Before issuing the writ, the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, nor exceeding the amount claimed by the plaintiff [in Nevada in gold coin], with sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

**Shares of Stock and Debts due Defendant, how Attached and Disposed of.**—The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

**Attorney to give Written Instructions to Sheriff what to Attach.**—Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to defendant, the sheriff shall serve upon such person a

copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

**Garnishment, when Garnishee liable to Plaintiff.**—All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, shall be, unless such property be delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

**Citation to Garnishee to appear before a Court or Judge.**—Any person owing debts to the defendant, or having in his possession or under his control any credits, or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

**Attachment may be Discharged.**—Whenever the defendant shall have appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, or to a county judge [in Idaho, probate judge], for an order to discharge the attachment wholly or in part; and upon the execution of the undertaking mentioned in the next paragraph, such order may be granted, releasing from the operation of the attachment any or all of the property attached, and ordering all of the property so released, and all of the proceeds of the

sales thereof, be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff. [Same in Nevada, except district judge to make order].

**Undertaking Required.**—Before granting such order, the court or judge shall require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders or householders in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge granting such release may fix the sum for which the undertaking shall be executed; and, if necessary, in fixing such sum to know the value of the property released, the same may be appraised by three disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached shall not be released from the attachment without their justification, if the same be required. [The same in Nevada, only the bond must be in money or currency, as the case may be.]

**When a motion to Discharge an Attachment may be Made, and upon what Grounds.**—The defendant may also, any time before the time for answering expires, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof or to a county judge, that the attachment be discharged, on the ground that the writ was improperly issued. [Same in Nevada, except there is no county judge.]

#### OREGON.

**When, to Issue.**—In an action to recover money or damages, the plaintiff, at any time after the commencement of the action and before the judgment, may attach in the following cases:

**Affidavit.**—The affidavit shall state that a cause of action

exists against the defendant, and the grounds thereof, and that the defendant is either:

1st. A foreign corporation; or,

2d. That he is not a resident of this state, or has departed therefrom with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent; or,

3d. That he has removed or is about to remove any of his property from this state with intent to delay or defraud his creditors; or,

4th. That he has assigned, secreted or disposed of, any of his property, or is about to assign, secrete or dispose of, it with intent to delay or defraud his creditors; or,

5th. That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought.

**Arrest of Debtor.**—A debtor may be arrested in Oregon, if the creditor can prove on oath that the said debtor is not a resident of the State or has departed therefrom, or that there is a good reason to believe that he is about to leave the state, with the intent to delay or defraud his creditors or to avoid the service of a summons; or that he has assigned, secreted or disposed of, or is about to assign, secrete or dispose of, his property, or any part thereof, with the intent to delay or defraud his creditors; or, that the debt was fraudulently contracted.

**Undertaking.**—Before executing a writ the sheriff, to whom it is directed, shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than one hundred dollars, nor exceeding the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, the plaintiff will pay all the costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.



## WASHINGTON.

**When, to Issue.**—Attachments may issue against a debtor when he does not reside within the limits of this territory; when he secretes himself to avoid the process; when he has removed or is about to remove his property, or the material part thereof; when he is about to sell, convey or otherwise dispose of, his property, with intent to hinder, defraud or delay, his creditors. No attachment for being a non-resident, or secretly leaving the territory, shall issue against a debtor while his family remains settled within the county where he usually resided, prior to his absence, if he shall not continue absent from the territory more than one year after he shall have absented himself, unless an attempt be made to conceal his absence. The plaintiff, or some one in his behalf, shall, before a writ issues, execute a bond with sufficient surety, to be approved by the clerk of the court, payable to the defendant, agreeing to pay all damages which may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

## FORMS.

*Affidavit for Attachment against Resident.*

..... Plaintiff,  
                   *against*  
 ..... Defendant.

State of California,  
 .... and County of ..... } ss.

....., the plaintiff in the above entitled action, being duly sworn, says:

That he is the agent of [or, "is the plaintiff"] the said plaintiff in said .... and county, and as such is better acquainted with the facts than the said plaintiff.

That the defendant in the said action is indebted to the said plaintiff in the sum of .... dollars, gold coin of the United States, over and above all legal set-offs and counter claims, upon an express [or "implied"] contract for the direct payment of money, to wit: upon a ....., and that such contract was made and is payable in this State, and that the payment of the same has not been secured by any mortgage, lien or pledge, upon real or personal property.

That the sum for which the attachment is asked in the said action: that is to say, the amount of indebtedness which is above stated, is an actual, bona

*fide*, existing debt, due and owing from the said defendant to the said plaintiff; and that the said attachment is not sought and the said action is not prosecuted to hinder, delay or defraud, any creditor or creditors of the said defendant.

[Signed] .....

*Affidavit for Attachment against Non-Residents.*

In the District Court of the .... Judicial District of the State of California,  
in and for the ....., County of .....

..... }  
Plaintiff,  
against  
..... }  
Defendant.

State of .....,  
..... and County of ..... } ss.

....., being duly sworn, says: That he is the plaintiff in the above entitled action.

That the defendant in the said action is indebted to him in the sum of .... dollars, gold coin of the United States, over and above all legal set-offs and counter claims, and that the said defendant is a non-resident of this State.

That the sum for which the attachment is asked in the said action: that is to say, the amount of indebtedness which is above stated, is an actual, *bona fide*, existing debt, due and owing from the said defendant to the said plaintiff; and that the said attachment is not sought and the said action is not prosecuted to hinder, delay or defraud, any creditor or creditors of the said defendant.

Subscribed and sworn to before me, this .... day of .... A. D. 18...

.....  
County Clerk of .... County.

*Undertaking on Attachment.*

.... District Court.

..... }  
against  
..... }

Whereas, the above-named plaintiff has commenced, or is about to commence, an action in the District Court of the .... Judicial District of the state of ....., against the above-named defendant, upon a contract for the direct payment of money, claiming that there is due to said plaintiff from said defendant the sum of ..... dollars, or thereabouts, and he is about to apply for an attachment against the property of said defendant, as security for the satisfaction of any judgment that may be recovered therein:

Now, therefore, we, the undersigned residents of the .... and county of ....., in consideration of the premises and of the issuing of said attachment, do jointly and severally undertake in the sum of ..... and .... dollars, and promise, to the effect that, if defendant recovers judgment in said action, said plaintiff will pay all the costs that may be awarded to the said defend-

ant and all damages which he may sustain by reason of the said attachment, not exceeding the sum specified in said undertaking of ..... and .... dollars.

Dated at ....., this .... day of ....., A.D. 18...

.....  
.....

.... and County of ....., as:

.... and ....., whose names are subscribed as sureties to the above undertaking, being severally sworn, each for himself, deposes and says, that he is worth ..... and .... dollars, the sum in the said undertaking specified as the penalty thereof, over and above all his debts and liabilities, exclusive of property exempt from execution.

..... [L.S.]  
..... [L.S.]

Subscribed and sworn to before me, this .... day of ....., A.D. 18...

.....  
Deputy Clerk.

*Indorsement on the above Undertaking.*

Approved and filed this .... day of ....., A.D. 18...

....., Clerk,  
By ..... Deputy Clerk.

*Writ of Attachment.*

In the district court of the .... judicial district, . . . and county of .....

..... }  
against  
..... }

The people of the state of ..... to the sheriff of the .... and county of ....., greeting:

Whereas, the above entitled action was commenced in the district court of the .... judicial district of the state of ....., by the above-named plaintiff, to recover from the said defendant the sum of ..... dollars or thereabouts, besides interest and costs of suit; and the necessary affidavit and undertaking herein having been filed, as required by law:

Now we do therefore command you, the said sheriff, that you attach and safely keep all the property of the said defendant, within your said county (not exempt from execution), or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above mentioned, unless the said defendant gives you security, by the undertaking of at least two sufficient sureties, in amount sufficient to satisfy such demand, besides costs, in which case you will take such undertaking, and hereof make due and legal service and return.

Witness, the Hon. ...., judge of the said district court, of the .... judicial district, this .... day of ....., A. D. 18 ..

Attest my hand and seal of the said court, the day and year last above written.

....., Clerk,  
By ..... Deputy Clerk.

*Sheriff's Notice of Attachment.*

Office of the Sheriff of the .....,  
County of ....., ....., 18... }

[Title of Case.]

To Mr. ....

You will please take notice, that all moneys, goods, credits, effects, debts due or owing, and all other personal property ..... in your possession or under your control, belonging to the defendant named in the writ, of which the annexed is a copy (or to either of them), are attached by virtue of said writ; and you are hereby notified not to pay over or transfer the same to any one but myself. Please furnish a statement.

....., Sheriff,

By ..... , Deputy Sheriff.

*Sheriff's Notice of Attachment of Stock.*

Office of the sheriff  
Of the ....., county of ..... }

[Title of Case.]

To Mr. ...., secretary of the ..... Gold and Silver Mining Company:

You will please take notice, that all stocks or shares, or interest in stocks or shares, of the ..... Gold and Silver Mining Company, in your possession, or under your control, belonging to the defendant named in the writ, of which the annexed is a copy, or to either of them, are attached by virtue of said writ; and you are hereby notified not to transfer or pay over the same to any one but myself. Please furnish a statement.

....., ....., 18...

....., Sheriff,

By ..... , Deputy Sheriff.

*Reply of Garnishee to Notice of Attachment.*

To ..... , sheriff of ..... county:

In reply to the notice of attachment in the case of [here state the title of the case], I reply that I am indebted to the said defendant in the sum of \$....., [or, I "am not indebted to him;" or, "I have no property in my possession, or under my control, belonging to him;" or, "I have no stocks," etc.]

Dated, ....., 18...

.....

*Undertaking on Release of Attachment.*

In the district court of the .... judicial district of the state of California,  
in and for the ..... county of .....

.....  
Plaintiff,  
against  
.....  
Defendant.

Whereas, the above named plaintiff commenced an action in the district

court of the .... judicial district of the state of California, in and for the county of ....., against the above-named defendant claiming that there was due to said plaintiff from said defendant, the sum of ..... dollars, or thereabouts, gold coin of the United States, besides interest, and thereupon an attachment issued against the property of the said defendant, as security for the satisfaction of any judgment that might be recovered therein, and certain property and effects of the said defendant have been attached and seized by the sheriff of the ....., county of ....., under and by virtue of the said writ.

And whereas, the said defendant has appeared in the said action, and has applied to the judge of the said court, upon reasonable notice to the said plaintiff, for an order to discharge the same ....., upon the execution of an undertaking on behalf of the said defendant by at least two sureties, residents and freeholders or householders of the said ...., county of ....., in accordance with the provisions of section 136 of the act, entitled "An act to regulate proceedings in civil cases in the courts of justice in this state," and the said Judge of said Court having fixed the sum for which the undertaking shall be executed at the sum of ..... and .... dollars:

Now, therefore, we, the undersigned residents and freeholders in the said ...., county of ....., in consideration of the premises, and in consideration of the release from attachment of all of the property attached, as above mentioned, and the discharge of said attachment, do hereby jointly and severally undertake in the sum of ..... and .... dollars, and promise that in case the said plaintiff recovers judgment in the said action, the said defendant will, on demand, re-deliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the said defendant and sureties will, on demand, pay to the said plaintiff the full value of the property released, not exceeding the sum of ..... and .... dollars.

Dated this .... day of ....., A.D. 18...

..... [L.S.]  
..... [L.S.]

State of California, ....., county of ....., ss.

..... and ....., whose names are subscribed as the sureties to the above undertaking, being severally duly sworn, each for himself, says: That he is a resident and freeholder in the ....., county of ....., and is worth the sum in the said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

.....  
.....

Subscribed and sworn to before me, this .... day of ....., A.D. 18...  
....., County Clerk.

## ATTESTATION.

**Attestation Clause.**—That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same.

## ATTORNEY AT LAW.

CALIFORNIA, NEVADA AND IDAHO.

**Who may be an Attorney.**—Any white male citizen or person who shall have declared his intention to become a citizen, in the manner required by law, of the age of twenty-one years, and qualified in other respects, may be admitted to practice in all the courts of this state. He shall be examined in open court and, if found qualified, admitted.

**In Justices' Courts.**—Any person may practice before a justice's court outside of the city and county of San Francisco. There, none but licensed attorneys can practice, excepting parties to the action; such may prosecute or defend in person before any court in the state.

**Authority of Attorney.**—An attorney has authority:

1st. To bind his client, in any of the steps of an action or proceeding, by his agreement, filed with the clerk or entered upon the minutes of the court, and not otherwise.

2d. To receive money claimed by his client, in an action or proceeding during the pendency thereof, or within one year after judgment, and upon the payment thereof and not otherwise to discharge the claim or acknowledge satisfaction of the judgment.

**Changing Attorneys.**—The attorney in an action or special proceeding may be changed at any time before judgment, before final determination, as follows:

1st. Upon his own consent, filed with the clerk or entered upon the minutes.

2d. Upon the order of the court or judge thereof, on the application of the client.

When an attorney is changed, written notice of such change must be given to the adverse party.

**Removal of Attorney.**—An attorney may be removed or suspended:

1st. On his conviction of a felony or misdemeanor involving moral turpitude.

2d. For willful disobedience of the order of the court, requiring him to do or not to do an act connected with, or in the course of, his profession.

**Satisfaction of Judgment.**—An attorney has power to enter satisfaction of a judgment, in any case in which he is the attorney of record, within one year after the judgment is rendered, unless a revocation of his authority is previously filed.

#### OREGON.

**Compensation.**—The measure and mode of compensation is left to the agreement of the parties; but there may be allowed the prevailing party, in the judgment or decree, certain sums by way of indemnity, for his attorney's fees in managing the action.

**Costs.**—The attorney of a foreign plaintiff who resides out of the state is liable for costs, and in case they are not paid, may be punished for contempt.

In other respects, the law is substantially the same as in California.

### ATTORNEY—GENERAL.

#### CALIFORNIA AND NEVADA.\*

**Election.**—The attorney-general shall be elected in the manner prescribed by the constitution and laws, and shall hold his office for four years.

**Residence, Bond, etc.**—He shall keep his office at the seat of government, give bond in the sum of twenty thousand dollars, and shall not depart from the state, without leave of absence from the legislature, for more than thirty days at any one time. [The same in Nevada, except the bond is five thousand dollars, and he shall not absent himself sixty days without leave from the legislature.]

**Duties.**—He shall attend each of the terms of the supreme court, and there prosecute or defend, as the case may be, all cases to which the state may be a party; also all causes to which any officers of the state, in their official capacity,

\* In Oregon and Idaho there are no such officers.

may be a party; also all causes to which any county may be a party, other than those in which the interest of the county may be adverse to the state or any officer of the state acting in his official capacity.

**Written Opinion.**—When required, he shall give his opinion in writing, without fee, to the legislature, or either house thereof, upon any question of law, and to the governor, the secretary of state, controller, treasurer, surveyor-general, the trustees of state hospitals or asylums, and any district attorney, upon any question of law relating to their respective offices.

**To Supervise District Attorneys.**—He shall supervise the district attorneys of the state in all matters pertaining to the duties of their office. He may require them to report to him the condition of public business intrusted to their charge, as may be prescribed by law, regulating the duties of district attorneys.

**Report, etc.**—He shall report annually to the governor the condition of the affairs of his office; and the governor may order him to repair to any county in the state and assist the district attorney in the discharge of his duties.

## AUDITOR.

**Auditor.**—An officer of the government, whose duty it is to examine the accounts of officers who have received and disbursed public moneys by lawful authority.

## AVERAGE.

**Average is of Three Kinds**—General, particular and petty.

**General Average.**—General average, in insurance, consists of expense incurred, sacrifice made or damage sustained, for the safety of a vessel, freight and cargo, or the two; and it is to be contributed for by the several interests, in the proportion of their several values, exposed to the common



danger and overcoming it—including the amount of expense, sacrifice or damage, so incurred. If a part of the goods only are damaged, those goods escaping contribute to make good the loss in proportion to their value.

**Particular Average.**—Particular average is a loss on the ship, cargo or freight, to be borne by the owner of the subject on which it happens, and is so called in distinction from general average, and if not total is also called a partial loss. It is insured against in marine policies.

**Petty Average.**—Petty average consists of small charges assessed on the cargo, to pay pilotage, towage, light-money, beaconage, anchorage and the like.

## AWARD.

**Award.**—See ARBITRAMENT AND AWARD

## BAIL.

**Bail.**—Those persons who become sureties for the appearance of a defendant in court. As to the qualification of bail, see SURETIES. See also MAGISTRATE.

**Bail Bond.**—A specialty by which the defendant and other persons become bound to the people of a state or to a sheriff, in a penal sum, for the appearance of the defendant to answer at a time stated.

## BAILEE.

**Bailee.**—One to whom goods are bailed; the party to whom personal property is delivered, under a contract of bailment. He must act in good faith and perform his undertaking in respect to the property intrusted to him, with the diligence and care required by the nature of his engagement. If a person borrows goods to use, he becomes

a bailee, and is bound to exercise *extraordinary* care of the goods, and is responsible if they are lost or injured.

**When the Bailment** is mutually beneficial to the parties, as where goods are hired or pledged to secure a debt, the bailee is only bound to exercise *ordinary* care in preserving the property.

**When the Bailee** receives no benefit from the bailment, as where he accepts goods, chattels or money, to keep without recompense, or undertakes, gratuitously, the performance of some commission in regard to them, he is answerable only for the use of the ordinary care which he bestows upon his own property of a similar nature. He must return the property according to his engagement; he cannot dispute his bailor's title to the goods.

## BANK ACCOUNT.

**Bank Account.**—A fund which merchants and others have deposited into the common cash of some bank, to be drawn out by checks, from time to time, as the depositor may require. The statement of the amount deposited and drawn, which is kept in duplicate, one in the depositor's bank-book and the other in the books of the bank.

**Bank Business and Accounts.**—It is safe to say that every person of consequence, doing business, finds it to his advantage to keep an account with some bank. This is, so to speak, an age of banks, and where there are so many, it is truly wonderful that so few turn out, when a "run" takes place, to be insolvent. A merchant keeping a bank account, has three advantages: His money is safe and secure; he saves time in counting, and runs no risk of losing in counting; he can leave his notes with the bank for collection, and have no trouble in notifying indorsers. He is, in effect, his own banker—his checks represent his bills.

**Opening an Account.**—When a person opens an account with a bank, he receives a small account book, called a deposit book. This deposit book he should send to the

bank, not only when he makes a deposit, but also at the close of each month, to be balanced.

**Discounting Notes, etc.**—When he offers a note or bill for discount, the request should be made in writing, and contain the names of promiser and indorsers [with their places of residence, if not stated in the note], amount due on note and the time it has to run. This memorandum should be addressed to the cashier, and is usually left with the discount clerk. When a note is discounted, the interest, for the time the note has to run, with three days' grace, is taken in advance.

**Drafts sent for Acceptance.**—When a draft is sent to a distant place for acceptance, notice should be sent to the person on whom it is drawn so as to precede its arrival.

**Forwarding Money.**—When money is to be transmitted by mail to a distant place, it would be safer and more convenient to send a draft, check or certificate of deposit.

## BANKRUPT.

**Bankrupt.**—A trader who secretes himself, or does certain other acts tending to defraud his creditors. A person who has done or suffered to be done some act, to do which is by law declared to be an act of bankruptcy.

## BONDS OF MATRIMONY.

**Bonds of Matrimony.**—Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same may have an opportunity to declare such objections before the marriage is solemnized. Formerly, such proclamation was always made in the churches, but now the custom is nearly obsolete.

## BAR TO ACTION.

**Bar to Action.**—A perpetual destruction of the action of

the plaintiff. In personal actions, a recovery by the plaintiff is a perpetual bar to another action for the same matter. So, where a defendant has judgment against the plaintiff, it is a perpetual bar to another action of like nature for the same cause.

When the Statute of Limitations has run against a cause of action, the action is said to be barred. See LIMITATIONS.

### BARGAIN AND SALE.

**Bargain and Sale.**—A contract or bargain by the owner of land, in consideration of money or something of value, to sell land to another person, called the "bargainee." As to the effect of the words "grant, bargain and sell, see CONVEYANCING.

### BARRATRY.

**In Criminal Law.**—A "barrator," is one who frequently excites and stirs up quarrels and suits, either at law or otherwise. An indictment for this offense must charge the offender with being a common barrator: and the proof must show at least three instances of offending. An attorney at law is not liable to indictment for maintaining a groundless action. It seems, from the decisions, that to do so would be an arbitrary interference with the rights and privileges of the gentlemen of the bar.

**In Maritime Law and Insurance.**—An unlawful act or culpable negligence of the master or sailors of a vessel, in violation of duty as such, and prejudicial to the owner, and against his commands or without his consent; piratically or feloniously appropriating the cargo, or running away with the vessel or cargo, or voluntarily delivering the vessel or cargo into the hands of pirates, are acts of the grossest barratry, and capital offenses by the laws of the United States of America.

### BASTARD.

**Bastard.**—One born of illicit connection and before the

lawful marriage of his parents. One begotten and born out of lawful wedlock. One born of an illicit union.

**A Man is a Bastard**, if born before the marriage of his parents; but he is not a bastard, if born after marriage, although begotten before. A man is a bastard, if born during coverture, under such circumstances as to make it impossible that the husband of his mother can be his father.

The following are provisions of the laws of California :

**Every Illegitimate Child** shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or his mother, any part of the estate of his or her kindred, either lenial or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage shall have acknowledged him as aforesaid, or adopted him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters; and on the death of either of them intestate and without issue, the others shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided hereinbefore, in like manner as if all had been legitimate. [Same in Nevada and Idaho.]

**The Issue** of all marriages deemed null in law,\* or dissolved by divorce, shall be legitimate. [Same in Nevada and Idaho.]

**Descent.**—If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother;

\* The issue of such marriages are legitimated by the statute without regard to the *grounds of nullity*. Marriages between whites and blacks are *null and void*; but the issue is legitimate.

or in case of her decease, to her heirs at law. [Same in Nevada and Idaho.]

#### OREGON.

**Concealing Death of Child.**—If any unmarried woman shall conceal the death of any issue of her body, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, such woman, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year.

**Indictment of Mother for Murder of Bastard.**—When a woman is indicted for the murder of her bastard infant, she may also be charged in the same indictment with the crime of concealing the death of her bastard child; and if she shall be found not guilty of the charge of murder, she may be found guilty of the crime of concealing the death of her bastard child, and punished accordingly.

**Illegitimate Child Heir of Mother.**—An illegitimate child is heir of its mother, the same as in California; but such child shall not be entitled to receive, as representing his mother, any property, real or personal, of the kindred of such mother. If such child dies before he is married, his property descends to his mother. If after the birth of such child his parents intermarry, such child shall be considered legitimate to all intents and purposes.

#### BATTERY.

**Battery.**—See ASSAULT AND BATTERY

#### BENCH.

**Bench.**—A tribunal for the administration of justice. The judges taken collectively, as distinguished from the counselors and advocates who are called the bar.

**Bench Warrant.**—An order issued by or from a court for

the attachment or arrest of a person. It may be issued either in case of a contempt or where an indictment has been found.

### BEQUEATH.

**Bequeath.**—To give personal property by will to another. The word will be construed *devise*, so as to pass to real estate.

### BIAS.

**Bias.**—A particular influential power which sways the judgment; the inclination or propensity of the mind toward a particular object. A juror's mind should be free from bias; that is, impartial.

### BIGAMY.

**Bigamy.**—Willfully contracting a second marriage when the contracting party knows that the first is still subsisting. See **CRIMES AND PUNISHMENTS**.

### BILL OF COSTS.

**Bill of Costs.**—A statement of the items which form the total amount of the costs of a suit or action. See **COSTS**.

### BILL OF EXCEPTIONS.

**Bill of Exceptions.**—A written statement of objections to the decision of the court upon a point or points of law, made by a party to a cause, and properly certified to by the judge or court who made the decision. The object of the bill is to put the decision objected to upon record for the information of the court having cognizance of the cause on appeal.

### BILLS AND NOTES.

**Bill of Exchange.**—A bill of exchange is a written order

or open letter of request, written by one merchant, banker or person, to another, requesting him to pay a sum of money therein mentioned to a third person or to his order, or to bearer

**The Writer or Maker,** is the *drawer*; the person to whom it is directed is the *drawee*, and the person in whose favor it is drawn is the *payee*.

**Acceptance of.**—If the bill is not paid when presented the *drawee* accepts it, by writing across the face of the bill “*accepted*,” and signing his name. This fixes his liability and makes him the principal debtor.

**Indorsement of.**—If the payee wishes to use this bill in the business world, he writes his name across the back of the bill, and thus adds a new party to the bill, and he becomes the *indorser*. Whoever receives it after this is called the *indorsee* or *holder*. This holder may indorse the bill again, and so on *ad infinitum*. These constitute all the parties to a bill of exchange.

**Promissory Note.**—A promissory note is a promise in writing, to pay a specified sum, at a time therein limited, or on demand or on sight, to a person therein named, or to his order or to bearer. The signer of a promissory note is called the *maker*, and the person to whose order it is made payable is called the *payee*.

**Two Classes of Parties.**—There may be two classes of parties on negotiable paper. The one embraces those who are *primarily* liable, who are the real debtors, and who are *absolutely* liable for the full face of the paper to the payee, indorsee or holder, however he may have neglected to demand payment and give notice of non-payment. These are the acceptor of the bill and the maker of the note. The other includes those who are *secondarily* liable, whose liability is *contingent*, and who are discharged entirely if the holder fails to make the proper demand of payment, and give the required notice in case of non-payment. These are the *indorser* and *drawer*. This distinction must be kept constantly in view by the holder of negotiable paper.



**The General Rule of Parties.**—The general rule, is that parties who are of age and reason, legally competent to contract, may become liable as parties to negotiable paper. An apparent exception obtains in the case of married women, who although competent in equity, under certain circumstances, to make contracts such as will bind them to performance and payment out of their separate property, are nevertheless not legally competent to bind themselves by becoming parties to negotiable paper.

**Form.**—No particular form of words is required to constitute a bill or note, yet there must be sufficient in it to make out an *order* or *promise* to pay. A promise to *deliver* or to be *accountable* or *responsible* for such a *certain* sum of money, has been held by the courts to be a promissory note. It must be for the payment of *money*, and the sum to be paid must be certain. It must not be *contingent*, but must be a “courier without luggage,” and must tell its story on its face or back.

**Must be for the Payment of Money.**—It must be for the payment of money *at all events*; and hence, if there be any contingency as to its payment, it is no bill or note; but if made payable on the happening of an event, however remote, yet if it be of a *certain* occurrence the bill or note is good, as : if made payable two months after the death of the maker’s mother-in-law.

**A Bill or Note** must contain some *amount*, and some *date* should be inserted. “Month” means a calendar month. It is usual to insert “value received,” but these words are unnecessary. On the Pacific coast, the parties to a note or bill are at liberty to stipulate as to the *kind* of money to be paid; and if it is agreed that the note or bill shall be paid in gold, a clause is inserted to that effect.

**Transfer.**—The payee or holder may transfer the bill or note by writing his name across the back of the instrument; and if so transferred, in the ordinary course of business, before it is due, to a person who takes it *bona fide* for value and without notice, he receives it free and clear of most of

the defenses which might have been available against it in the hands of the party from who he receives it.

**Indorsement.**—If the indorser wishes to make it payable to a particular person, A B, he writes across the back: "Pay to A B or order." This is called a special indorsement, because it is good only in the hands of A B, and cannot be again transferred unless indorsed by A B.

**How Indorsed.**—If the note be drawn to the order of several persons, not copartners, it must be indorsed by each of such persons upon transfer.

**Guarantor, who is.**—A guarantor is one who puts his name on the back of the paper, out of the usual course of regular transfer and negotiability. Under the California decisions, he is liable to pay if the maker does not, provided there has been due presentment made to the maker, and strict notice of non-payment given to the guarantor.\*

**Foreign Bills of Exchange.**—Bills of exchange are called *foreign* when drawn upon a party and place out of the state, and *inland* when between parties within the state.

**Checks.**—Checks upon a banker partake of the character of inland bills of exchange.

**Drafts and Orders.**—What are commonly called drafts, orders and acceptances, upon other persons for the payment of money, are, in general, inland bills of exchange.

**Due Bills and Certificates.**—Due bills and certificates of deposit are considered in the character of promissory notes.

**When Negotiable, if not Drawn for Money.**—When the instrument is not drawn or made to order, or to bearer, but to A B, or is not for the payment of money but for goods, it is binding between the parties and is assignable, but is not a negotiable note, except to the following extent:

**By the Statute of California,** bonds, due bills, notes and other instruments of writing, by which a person promises to pay money or goods to another, although not negotiable,

\* A delivery of a negotiable promissory note to the assignee, without written indorsement, is good, and the title passes.

may be assigned by indorsement in the same manner as bills of exchange; but if suit be brought thereon by the holder, the maker can set up in defense any good offset he may have against the payee that existed before he received notice of the assignment.

**The Indorser** of such paper is only liable, provided the holder has brought suit against the maker within sixty days, except where suit would have been unavailing or the maker has absconded.

**Payable on Demand.**—When a bill is drawn payable on demand, or at a certain period, say ten days after sight, it should be presented to the party upon whom it is drawn as promptly as may be convenient for acceptance, that the day of payment may be determined. If accepted, the acceptor should write the acceptance on the face of the bill. The holder should then present the bill for payment at the end of the time allotted, with the days of grace added, which in the case supposed would be thirteen days; or if on demand, it would be at the end of the days of grace—three days.

**Protest of.**—If acceptance be refused, the bill should be protested for non-acceptance, and notice should be given to the drawer in order to hold him liable. If it be accepted, but not paid at the proper time, the bill should be protested for non-payment, and notice given as above for the same purpose. If, after acceptance, the bill has been transferred from hand to hand by indorsement, upon protest for non-payment, notice should be given to each of the indorsers, as well as to the drawer, in order to hold them liable also.

**The Requisites of Protest and Notice**, how, when and where, to demand payment, etc., will be found in this volume under the head of **NOTARY**.

**When Presented for Payment.**—The same doctrine applies to promissory notes. If the note be drawn to the order of any person, payable at a certain day, say ten days, it should be presented for payment within reasonable hours, on the thirteenth day, and if not paid, notice should be given to the indorser in order to hold him liable; and if

there be several indorsers, notice should be given to each one, for the same purpose.

**Payable on Demand, when Presented.**—If payable on demand, the demand should be made within a reasonable time; and on the third day thereafter, within reasonable hours, the note should be presented for payment; and on failure of payment, notice should be given to the indorser or indorsers in like manner and for the like object.

**Not Necessary to Protest.**—It is not necessary to protest a promissory note, although it is usual to do so. A demand of payment and, upon neglect or refusal, notice to the indorser is all that is requisite

#### STATUTORY PROVISIONS.

The following provisions in relation to bills and notes are found in the statutes of California, Oregon, Washington, Nevada and Idaho:

**Notes Payable to Order or Bearer, Effect of.**—Promissory notes, payable to order or bearer, have the same effect and are negotiable, and may be sued on like inland bills of exchange, according to the custom of merchants. Such notes may be signed by an agent, if lawfully authorized, and by corporations capable by law of making contracts. Such notes made payable to the maker, or to the order of a fictitious person, shall have the same effect and be of the same validity as against the maker and all persons having knowledge of the facts, as if payable to the bearer. No person within the state or territory shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

The following provisions are found in the statutes of California, Washington, Nevada and Idaho:

**When Acceptance Binds, etc.**—If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance, in favor of a person who, upon the faith thereof, shall have received the bill for a valuable consideration. A refusal to write an acceptance on the bill after request, is a refusal to accept, and the bill may be protested for non-acceptance. A party who has drawn or negotiated a bill, on the faith of a previous promise to accept, may recover damages on refusal of the promisor to accept. If a drawer destroy a bill delivered for acceptance, or refuse to return it accepted or non-accepted, for twenty-four hours, or such longer time as the holder may allow, he shall be deemed to have accepted it.

**Damages on Protest.**—The provisions of the several statutes in regard to damages are as follows:

**In California and Nevada,** upon protest for non-acceptance or non-payment of bills drawn or negotiated in this state—

1st. If drawn upon any person in the United States east of the Rocky Mountains, fifteen dollars upon the hundred upon the principal sum.

2d. If drawn upon any person in a foreign country, twenty dollars. If the contents of the bill be expressed in money of account of the United States, the amount due is computed without reference to the rate of exchange; but if expressed in the money of account or currency of any foreign country, the amount is ascertained and determined by the rate of exchange on the value of such currency at the time of the demand for payment.

**Such Damages** are allowed only to a *bona fide* holder for a valuable consideration, and are in lieu of interest and all charges previous to and at the time of giving notice; but interest may be recovered upon the principal sum and damages from the time of giving notice.

**In Idaho,** damages are allowed as follows:

When drawn on persons *west* of the Rocky Mountains, including Utah and Montana, twenty per cent. upon the principal sum. If drawn on persons *east* of the Rocky

Mountains, in the United States, twenty-five per cent. If drawn on persons in any place in the British possessions in North America, west of the Rocky Mountains, including Vancouver's Island, twenty-five per cent. If drawn upon any person in Europe, thirty per cent.

**In Oregon**, upon protest for non-acceptance or non-payment of bills drawn in the state:

1st. On any place out of the United States, ten per cent. upon the contents, with interest on the contents from the date of protest, with the addition of the current rate of exchange at the time of the demand.

2d. On any place out of Oregon and within the United States, the amount of the bill, with legal interest, according to its tenor, and five per cent. damages, together with costs and charges of protest.

**In Washington**, upon protest for non-payment of bills drawn or indorsed in the territory, if payable without the limits of the United States, ten per cent. upon the contents thereof; if payable within the United States, out of the territory, five per cent. on the contents: such damages to be in lieu of interest, charges of protest and all other charges, incurred previous to and at the time of giving notice; but interest upon the amount of the principal sum and the damages may be recovered from the time of giving notice.

**Days of Grace.**—Three days of grace are allowed in California, Nevada and Idaho, except on sight bills or drafts, and the first of January, the fourth of July and the twenty-fifth of December (and in Nevada the twenty-second of February also), for the purpose of presentment, protest and notice, are considered as Sunday. In Oregon and Washington, grace is allowed on all bills payable at sight, or at a future day certain within the state or territory, and on all promissory notes, orders and drafts, payable at a future day certain within the state or territory, except that in Oregon grace is not allowed on bills, notes or drafts, payable on demand. In Washington, the fourth of July and the twenty-fifth of December, for the purposes of protest, etc., are considered as Sunday.

In California, bills and notes may be made or drawn by telegraph.

## FORMS.

*Bills of Exchange.*

\$..... San Francisco, ....., ..  
 Ten days after sight, pay to the order of ..... & Co., ten thousand  
 dollars, and charge the same to account of ..... & Co.  
 To Messrs. .... & Co., New York.

*A Set of Bills of Exchange.*

..... & Co., ..... Banking office.  
 No. .... Ex. for \$..... San Francisco, Cal., ....., 18..  
 At sight of this first of exchange (second and third unpaid), pay to the  
 order of .....  
 Value received, and charge the same to account of ..... & Co.  
 To Messrs. .... & Co., ...., New York.

..... & Co., ..... Banking Office.  
 No. .... Ex. for \$..... San Francisco, Cal., ....., 18..  
 At sight of this second of exchange (first and third unpaid), pay to the  
 order of ..... dollars.  
 Value received, and charge the same to account of ..... & Co.  
 To Messrs. .... & Co., ...., New York.  
 ..... & Co., ..... Office.

No. .... Ex. for \$..... San Francisco, Cal., ....., 18..  
 At sight of this third of exchange (first and second unpaid), pay to the  
 order of .....  
 Value received, and charge the same to account of ..... & Co.  
 To Messrs. .... & Co., ...., New York.

*Bank Check.*

No. .... San Francisco, ....., 18..  
 ..... & Co., pay to ..... or order, ..... dollars (\$....)

*Promissory Note, Negotiable.*

\$.... San Francisco, ....., 18..  
 .... days from date, for value received, I promise to pay to the order of  
 ..... & Co., .... thousand dollars, with interest at two per cent. per  
 month.

*Another Form.*

\$.... month after date, for value received, I promise to pay to ....  
 ...., or bearer, .... hundred and .... dollars, with interest after maturity at  
 .... per cent. per month.  
 San Francisco, ....., 18..

*Another Form*

\$.... ..... 18..  
 .... days from date, I promise to pay to .... or order, ..... dollars.

*Note not Negotiable.*

\$.... ..... 18..  
 .... days from date I promise to pay to ..... dollars, value received.

*Note Payable on Demand.*

\$.... On demand, for value received, I promise to pay to ..... or bearer, ..... thousand ..... hundred dollars, with interest from date until paid, at .... per cent. per month, compounded.  
 ..... 18..

*Note Payable at a Banker's.*

\$.... ..... 18..  
 .... days from date, value received, I promise to pay to the order of .... and ...., at the banking house of ..... thousand dollars.

*Note for Loan, to be accompanied by Mortgage.*

\$..... Six months from date, without grace, for value received, I promise to pay to ..... or order, at the banking house of .... and ...., ..... thousand dollars, with interest thereon, at the rate of two and one-half per cent. per month, payable monthly in advance, agreeing that upon failure to pay said monthly interest at any time for more than five days after any day when the same may be due, the whole amount of principal and interest shall at once become due and payable; and further, that such interest may be added to the principal, such aggregate of principal and interest to bear the same rate of interest both before and after judgment until paid; and further, that in the event of a suit to enforce the collection of this note, a counsel fee of ten per cent. upon the amount of principal and interest due at the time of judgment may be added to and form a part of such judgment.

*Note Secured by Collateral, with Power to Sell.*

..... 18..  
 \$..... .... days after date, without grace, I promise to pay to the order of ....., at the banking house of ....., in the city of San Francisco, ..... thousand dollars, value received, with interest after .... days until paid, at the rate of .... per cent. per month, payable monthly.

I hereby deposit, as collateral security, for the payment of the above note, .... shares (\$..... each) of the ..... Mining Co., and I hereby appoint and constitute ....., his heirs or assigns, my attorney irrevocable, with power of substitution, to sell without notice to me, the whole or any part of said security, either at public or private sale; the proceeds to be applied to the payment of the above note, interest due and expenses of sale, in case of non-payment of said note when due; any surplus, after payment of said note, interest and expenses, to be subject to my order. But in case of pay-



ment of above note and interest, according to the terms of the former, then this agreement to be void, and the above-named security to be returned to me.

*Note Payable by Installments.*

....., ....., . th, 18..  
 \$.... For value received I promise to pay to ... .., at .....  
 ..... county, one thousand dollars, in one month from date, one thousand  
 dollars, one year from date; and one thousand dollars, one day after the  
 death of my great-grandfather. Said respective sums to bear interest, at the  
 rate of one per cent. per month until paid.

*Memorandum Note for Money Lent.*

\$.... Borrowed of ..... dollars, to be paid when demanded.  
 ..... , 5th, 18..  
 Witness :

*Due Bill.*

\$.... Due ..... hundred dollars.  
 ..... , 18..

*Draft or Order.*

Mr. .... : ..... , 18..  
 Please pay ..... or bearer, .... dollars, and charge the same to account  
 of .....

*Indorsement, in Blank.*

[Signed] .....

*Indorsement to a Particular Person.*

Pay to .....  
 [Signed] .....

*Indorsement to Avoid Liability.*

Without recourse.  
 [Signed] .....

*Special Indorsement.*

Pay to order of .....  
 [Signed] .....

*Indorsement of an Agent.*

....., by his agent.  
 .....

*Notice of Protest of Bill, or Note, or Check, for Non-payment.*

San Francisco, .... , 18..

SIR: Please take notice that a certain bill of exchange [or, "note" or  
 "check"], dated ....., 18.., for .... thousand dollars, payable one month

from date, drawn by . . . . ., in favor of . . . . . [and accepted by . . . . .], [or, "and indorsed by . . . . ., . . . . .," etc.,] was this day presented by me, to . . . . . [or, " . . . . ."], and payment thereof demanded, which was refused; the said bill [or, "note," or, "check"] having been dishonored, the same was this day protested by me, for the non-payment thereof, and the holder looks to you for the payment thereof, together with all costs, charges, interest, expenses and damages, already accrued or that may hereafter accrue thereon by reason of the non-payment of said bill of exchange [or, "note," or, "check"].

Very respectfully,

Your obedient servant,

Notary Public.

To . . . . . [or " . . . . ., . . . . .," etc.]

For other forms of notice and of protest, see NOTARY.

## BILL OF INDICTMENT.

**Bill of Indictment.**—A written accusation of one or more persons, of a crime or misdemeanor, lawfully presented by a grand jury. If the grand jury are satisfied that the accused ought to be tried, the return is made as "A true bill;" but when no sufficient ground is shown for putting the accused on trial, a return is made: "Not a true bill;" or, "Not found;" or "Bill ignored."

## BILL OF LADING.

**Bill of Lading.**—The written evidence of a contract for the carriage and delivery of goods sent by sea or land, for a certain freight. It should contain the name of the shipper or consignor, the name of the consignee, the names of the vessel and her master, the places of shipment and destination, the price of the freight, and in the margin the marks and numbers of the things shipped. It is usually made in three or more original parts, one of which is sent to the consignee with the goods, one or more others are sent to him by different conveyances, one is retained by the merchant or shipper, and one should be retained by the master. It is assignable by indorsement, and the assignee is entitled to the goods, subject to the shipper's right of stoppage *in transitu*.

## BILL OF PARCELS.

**Bill of Parcels.**—An account containing in detail the names of the items which compose a parcel or package of goods. It is usually transmitted with the goods to the purchaser, in order, if any mistakes have been made, it may be corrected.

## BILL OF PARTICULARS.

**Bill of Particulars.**—A detailed, informal statement of a plaintiff's cause of action, or a defendant's set-off. It is an account of the items of the claim, and shows the manner in which they arose.

## BILL OF SALE.

The term, "**Bill of Sale**," is applied to a written instrument, which is the evidence of an act of sale of goods and chattels. A distinction exists between an assignment and a bill of sale, in this, that the term "assignment" applies to transfers of real as well as personal estate, and to transfers of personal estate made verbally, or by deed or other writing.

**No Writing is Necessary** to the sale of personal property; delivery is only necessary. Still, it is better, in cases of importance, to preserve some evidence in writing of what is bought and sold. To be good against creditors, there must be an actual and continued change of possession of the thing sold. See **CONTRACTS**. See also, **ASSIGNMENTS**.

### FORMS.

#### *Bill of Sale—Simple Form.*

In consideration of .... hundred and .... dollars to me in hand paid by ...., I do hereby sell and deliver to him my .... horse, branded ...., on left hip.

....., 18...

.....

#### *Another Form.*

Received of ..... \$..... in payment of .... thousand fruit trees, I have sold and delivered to him, this .... day of ....., 18...

.....

*Bill of Sale of Goods and Chattels.\**

Know all men by these presents: That I, . . . . ., of the town of . . . . ., in the county of . . . . ., and state of . . . . ., of the first part, for and in consideration of the sum of . . . . dollars, lawful money of the United States, to me paid by . . . . ., of, etc, of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators and assigns, the one equal, undivided half, of . . . . hundred acres of barley, now growing on the rancho of . . . . ., near the town of . . . . ., aforesaid, one roan horse and . . . . thousand sheep, belonging to me, and now in my possession, at the place last aforesaid; to have and to hold the same unto the said party of the second part, his executors, administrators and assigns, forever. And I do, for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels, hereby made, unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever.

Witness my hand and seal this . . . . day of . . . ., A.D. 18..

[Signed]

.....

## BINDING OUT.

**Binding Out.**—A term applied to the contract of apprenticeship. The contract must be by deed, to which the infant, as well as the parent or guardian, must be a party, or the infant will not be bound.

## BLANK INDORSEMENT.

**Blank Indorsement.**—An indorsement that does not mention the name of the person in whose favor it is made. See **BILLS AND NOTES.**

## BONA FIDES.

**Bona Fides.**—Good faith; honesty, as distinguished from *mala fides* (bad faith). *Bona fide*, in good faith. A purchaser, *bona fide*, is one who actually purchases in good faith.

\* This form may be varied so as to suit any case that may arise.

## BONDS.

**Bonds, in General.**—A bond or obligation, is a deed whereby the obligor binds himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed, or to perform some act. If in a bond the obligor bind himself and his heirs to do anything whatsoever, his heirs are bound; therefore, if it is intended to bind the heirs the term “heirs” must be named in the bond; executors and administrators are bound, though not named. If a man covenant for himself only to pay money, build a house or the like, and do not say in the covenant “his executors and administrators,” yet his executors and administrators are bound, and shall be charged.

**Executors and Administrators.**—Executors and administrators need not be named in any legal instrument; they are bound by every covenant, unless it is such a covenant as is to be performed personally by the covenantor, and there has been no breach of the covenant before his death.

**Bonds and other Instruments** are often found, where the repetition of the words “his executors and administrators and assigns,” constitute about one-third of the instrument. As these words are mere surplusage, and serve only to obscure the sense and lengthen the instrument, they may always be omitted.

**Single Bonds, etc.**—A bond without a condition is called a single one; but a condition is generally added which makes the obligation void if the act be performed, otherwise it remains in full force. In case this condition is not performed, the bond becomes forfeited, or absolute at law, and charges the obligor. A penalty for non-fulfillment of the condition is annexed, in double the principal sum. If a bond be sealed and delivered, though it bear no date, it is valid. If a bond be interlined, or words are erased, in important parts, it will render it void unless done before signing. Bonds and all penal obligations, in whatever form, to do an act forbidden by law, or to forego any priv-

ileges secured to a man by law, are void. The same is true of agreements, or obligations to divide the profits or gains to be derived from illegal speculations or business. Thus, a bond or note to pay illegal interest, a sum of money won at gaming, or to commit a trespass on the property, or an assault on the person of another, is void; as is likewise an obligation not to plead usury, infancy or any other legal defense, to a suit, or not to prosecute a man for a crime, or for cheating or taking an illegal advantage of another. This is invariably the rule as between the parties to the instrument.

**Bottomry Bond.**—A bottomry bond is an obligation founded on the joint security of a ship and its owners, and given for money borrowed, which is to be repaid on the successful termination of a voyage. At home, the bond is executed by the owners or the master, as their agent. In a foreign country, the master has full authority to bind the owners, and pledge the ship and cargo, by a bottomry bond, in cases of necessity. Any amount of interest may be exacted, so long as the sea-risk continues, irrespective of the usury laws; but when that terminates, the obligation will only draw legal interest. Respondentia is a contract similar to bottomry, except that the loan is made upon the chance of the safe arrival of the cargo. Like bottomry, it is used in cases of emergency.

#### FORMS.

##### *Common Bond, with Security.*

Know all men by these presents : That I, . . . . ., of the town of . . . ., in the county of . . . ., and state of . . . ., am held and firmly bound unto . . . . ., of, etc., in the sum of . . . . dollars, lawful money of the United States, to be paid to the said . . . . ., his executors, administrators or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal. Dated the . . . . day of . . . ., one thousand eight hundred and . . . .

The condition of the above obligation is such, that if the above bounden . . . . ., his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named . . . . ., his executors, administrators or assigns, the just and full sum of . . . . hundred dollars, in . . .

equal annual payments, from the date hereof, with annual interest, then the above obligation to be void ; otherwise to remain in full force and virtue.

Sealed and delivered in presence of ..... [L.s.]

.....

*Bond—Several Payments.*

Know all men by these presents : etc., [as in common bond, and then add :] the just and full sum of .... dollars, in manner following : that is to say, the sum of .... dollars on the .... day of .... next ; the sum of .... dollars on the .... day of ...., 18.. ; and the remaining sum of .... dollars in one year from the said last-mentioned date, together with the legal interest on the whole sum remaining unpaid at the time of each payment ; then the above obligation to be void ; else to remain in full force and virtue.

Sealed, etc., [as in common bond]

*Bond, with Interest Condition.*

Know all men by these presents : etc., [as in common bond, and then add:] the just and full sum of .... dollars, on the .... day of ...., in the year of our Lord, 18.., and the legal interest thereon, to be computed from the day of the date hereof, and to be paid ...., on the .... day of ...., and the .... day of ...., in each and every year ; then the above obligation to be void ; else to remain in full force and virtue. And it is hereby expressly agreed, that should any default be made in the payment of said interest, or any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of .... days, the aforesaid principal sum of .... dollars with all arrearages of interest thereon, shall, at the option of the said ...., his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired; anything herein-before contained to the contrary thereof, in any wise notwithstanding.

Sealed, etc., [as in common bond].

*Bond to a Corporation.*

Know all men by these presents : That I, ...., of, etc., am held and firmly bound unto the .... Insurance Company, in the sum of .... dollars, lawful money of the United states, to be paid to the said .... Insurance Company or assigns ; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal. Dated the .... day of ...., one thousand eight hundred and....

The condition of the above obligation is such, that if the above bounden ...., his heirs, executors or administrators, shall well and truly pay or cause to be paid unto the above-named .... Insurance Company or assigns, the just and full sum of, etc., [as in common bond].

*Bond to Executors.*

Know all men by these presents : That I, ...., of, etc., am held and

firmlly bound unto . . . . . and . . . . ., of, etc., executors of the last will and testament of . . . . ., deceased, late of, etc., in the sum of . . . . . dollars, lawful money of the United States, to be paid to the said . . . . . and . . . . ., executors as aforesaid, the survivors or survivor, or his or their assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmlly by these presents.

Sealed with my seal. Dated the . . . . . day of . . . . ., one thousand eight hundred and . . . . .

The condition of the above obligation is such, that if the above bounden . . . . ., his heirs, executors or administrators, shall well and truly pay or cause to be paid unto the above-named . . . . . and . . . . ., executors as aforesaid, the survivors or survivor, or his or their assigns, the just and full sum, etc., [as in common bond].

*Indemnity Bond to Sheriff.*

Know all men by these presents: That we . . . . ., . . . . . and . . . . ., are held and firmlly bound unto . . . . ., sheriff of the county of . . . . : Whereas, the above bounden . . . . . did obtain a judgment in the . . . . court of the state of . . . . ., on the . . . . . day of . . . . ., 18 . . . ., against . . . . ., for . . . . . dollars and . . . . . cents, damages and costs, whereupon execution has been issued, directed and delivered to the said . . . . ., sheriff as aforesaid, commanding him, that of the goods and chattels of the said . . . . ., he should cause to be made the damages and costs aforesaid. And, whereas, certain goods and chattels that appear to belong to the said . . . . . are claimed by . . . . ., of, etc.: Now, therefore, the condition of this obligation is such, that if the above bounden . . . . . shall well and truly keep, and bear harmless and indemnify the said . . . . ., sheriff as aforesaid, and all and every person and persons aiding and assisting him in the premises, of and from all harm, let, trouble, damages, costs, suits, actions, judgments and executions, that shall or may at any time arise, come or be brought against him, them or any of them, as well for the levying and making sale, under and by virtue of such execution, of all or any goods and chattels which he or they shall or may judge to belong to the said . . . . ., as for entering any shop, store, building or other premises, for the taking of any such goods and chattels, then this obligation to be void; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

*Bond, with Warrant of Attorney to confess Judgment.*

Know all men, etc., [as in common bond, and then add:] the just and full sum of . . . . . dollars, on demand, then the above obligation to be void; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

Whereas, I, . . . . ., of, etc., am held and firmlly bound unto . . . . ., of, etc., by a certain bond or obligation of this date, in the penal sum of . . . . dollars, conditioned for the payment of . . . . dollars, on demand: Now, therefore, I do authorize and empower any attorney in any court of record in the state of . . . . ., to appear for me at the suit of the said obligee or his



representatives, in an action of debt, and confess judgment against me upon the said bond or obligation, or for so much money borrowed, of any term or vacation of term, antecedent or subsequent to this date; and to release to the said obligee all errors that may intervene in obtaining such judgment, or in issuing execution on the same.

Signed and sealed this .... day of ....., A.D., 18...

In presence of ..... [L.S.]

.....

*Bond to Execute a Conveyance.*

Know all men, etc., [as in common bond to the petition, and then add:] The condition of the above obligation is such, that if the above bounden ...., on or before the .... day of .... next, or in case of his death before that time, if the heirs of the said ...., within .... months after his decease (if such heirs shall then be of full age, or if within age, then within three months after such heirs shall be of full age) shall and do, upon the reasonable request and at the cost and charge of the said ...., his heirs or assigns, make, execute and deliver, or cause so to be, a good and sufficient warranty deed, in fee simple, free from all incumbrance and with the usual covenants, of the following described premises, to wit: all, etc., [describe the premises], then the above obligation to be void; else to remain in full force and virtue.\*

Sealed, etc., [as in common bond].

*Bond of an Officer of a Bank or Company.*

Know all men, etc., [as in bond to a corporation, substituting the name of the bank for that of the company, if necessary, and then add:] Whereas, the above bounden .... has been chosen and appointed cashier [or, "teller," or "treasurer," as the case may be] of the ..... Company [or, "bank"], by reason whereof divers sums of money, goods and chattels and other things, the property of the said company [or "bank"], will come into his hands: Now, therefore, the condition of the above obligation is such, that if the said ...., his executors or administrators, at the expiration of his said office, upon request to him or them made, shall make or give unto the said company [or, "bank"], or their agent or attorney, a just and true account of all such sum or sums of money, goods and chattels and other things, as have come into his hands, charge or possession, as cashier [or, "teller," or "treasurer"] as aforesaid, and shall and do pay and deliver over to his successor in office, or any other person duly authorized to receive the same, all such balances or sums of money, goods and chattels and other things, which shall appear to be in his hands, and due by him to the said company [or, "bank"]; and if the said .... shall well and truly, honestly and faithfully, in all things, serve the said company [or, "bank"], in the capacity of cashier [or, "teller," or, "treasurer"], as aforesaid, during

\* The above form may be readily varied if the condition should be to procure an heir-at-law to convey, when of age; and a clause may be added to warrant and defend the obligee, in the quiet enjoyment of the premises, until such conveyance be executed, or his executors may be bound, etc.

his continuance in office, then the above obligation to be void ; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

*Bond of Indemnity to a Surety in a Bond.*

Know all men, etc., [as in common bond to the condition, and then add :] Whereas, the said . . . . ., at the especial instance and request of the above bounden . . . . ., has bound himself, together with the said . . . . ., unto one . . . . ., of, etc., in a certain obligation, bearing even date herewith, in the penal sum of . . . . . dollars, lawful money of the United States, conditioned for the payment of the sum of . . . . . dollars, due and owing by the said . . . . . to the said . . . . ., on, etc., [as in the bond, or, if a bail bond be referred to say : "conditioned for the appearance of the said . . . . .," etc. ; or, "conditioned that the said . . . . . shall put in special bail," etc. :] Now, therefore, the condition of the above obligation is such, that if the said . . . . . shall well and truly perform and fulfill the condition of the said bond, executed to the said . . . . ., in manner and form as he is therein required to do, and at all times hereafter, save harmless the said . . . . ., his heirs, executors and administrators, of and from the said obligation, and of and from all actions, costs and damages, for or by reason thereof, then this obligation to be void ; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

*Bond of Indemnity on Paying Lost Note.*

Know all men, etc., [as in common bond] : Whereas, the said . . . . ., on the . . . . day of . . . ., 18.., did make, execute and deliver, unto the above named . . . . ., for a valuable consideration, his promissory note, for the sum of . . . . hundred dollars, written due and payable, on or before the . . . . day of . . . ., then next, with interest, which said promissory note the said . . . . ., since the delivery of the same to him, as aforesaid, has in some manner, to him unknown, lost out of his possession ; and whereas, the said . . . . . hath this day paid unto the said . . . . ., the sum of . . . . dollars, the receipt whereof the said . . . . . doth hereby acknowledge, in full satisfaction and discharge of the said note, upon the promise of the said . . . . ., to indemnify and save harmless the said . . . . ., in the premises and to deliver up the said note, when found, to the said . . . . ., to be canceled : Now, therefore, the condition of this obligation is such, that if the above bounden . . . . ., his heirs, executors or administrators, or any of them, do and shall, at all times hereafter, save and keep harmless the said . . . . ., his heirs, executors and administrators, of, from and against, the promissory note aforesaid and of and from all costs, damages and expenses, that shall or may arise therefrom ; and also deliver or cause to be delivered up the said note, when found, to be canceled, then this obligation to be void ; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

*Bond for Performance, to be Indorsed on a Contract or Agreement.*

Know all men, etc., [as in common bond]. The condition of this obliga-

tion is such, that if the above bounden . . . . ., his executors, administrators or assigns, shall, in all things, stand to and abide by, and well and truly keep and perform, the covenants, conditions and agreements, in the within instrument contained, on his or their part to be kept and performed, at the time and in the manner and form therein specified, then the above obligation shall be void; else to remain in full force and virtue.

Sealed, etc., [as in common bond].

*Bottomry Bond.\**

Know all men by these presents: That I, . . . . ., master and one-third owner of the ship . . . . ., for myself and . . . . ., who owns the other two-thirds of said ship, am held and firmly bound, unto . . . in the penal sum of . . . dollars, lawful money, for the payment of which to the said . . . . ., his heirs, executors, administrators or assigns, I hereby bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal. Dated the . . . day of . . ., A.D. 18..

Whereas, the above bounden . . . . . hath taken up and received of the said . . . . . the just and full sum of . . . dollars, which sum is to run at respondentia, on the block and freight of the said . . . . ., whereof the said . . . . . is now master, from the port of . . . . ., on a voyage to the port of . . . . ., having permission to touch, stay at and proceed to call, at all ports and places within the limits of the voyage, at the rate of premium of . . . per cent. for the voyage: In consideration whereof, usual risks of the sea, rivers, enemies, fires, pirates, etc., are to be on account of the said . . . . . And for further security of the said . . . . ., the said . . . . . doth, by these presents, mortgage and assign over to the said . . . . ., his heirs, executors, administrators and assigns, the said ship . . . . . and her freight, together with all her tackle, apparel, etc. And it is hereby declared, that the said ship . . . . . and her freight is thus assigned over for the security of the respondentia taken up by the said . . . . . and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now, therefore, the condition of this obligation is such, that if the above bounden . . . . ., his heirs, executors or administrators, shall and do well and truly pay or cause to be paid, unto the said . . . . ., or to his attorneys, legally authorized to receive the same, his or their executors, administrators or assigns, the just and full sum of . . . thousand dollars, being the principal of this bond, together with the premium which shall become due thereon, at or before the expiration of . . . days after the arrival of the ship . . . . . at the port of . . . . .; or in case of the loss of the said ship; such an average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise to remain in full force and virtue.

Having signed to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.

. . . . ., for self and . . . . . [L.S.]

Sealed and delivered in presence of

. . . . .

\* This same form may be used as a respondentia bond, only the loan is made on the cargo of the vessel.

*Bond of Treasurer [or, "Trustee"] of a Lodge of I. O. of O. F., or of any similar Association.*

Know all men by these presents : That we, . . . . ., as principal, and . . . . ., and . . . . . as sureties, all of . . . . ., in the county of . . . . ., and state of . . . . ., are held and firmly bound unto [state name of association] in the sum of . . . . dollars, to be paid unto the said . . . . . and . . . . ., their successors, or their certain attorneys, executors, administrators or assigns. To which payment well and truly to be made, we jointly and severally bind ourselves and our respective heirs firmly by these presents. Sealed with our seals and dated the . . . . day of . . . ., eighteen hundred and . . . .

The condition of this obligation is : That whereas, the above named . . . . ., has been chosen by an association known as the . . . . ., treasurer, [or, "one of the trustees"] of said association, by reason whereof and as such treasurer [or, "trustee"], he will receive into his hands and possession divers sums of money, goods and chattels and other things, the property of said association ; and is bound to keep true and accurate accounts of said property, and of his receipts and disbursements for and on account of said association.

Now, therefore, if the said . . . . . shall well and truly perform all and singular the duties of treasurer [or, "trustee"] of said association, for and during his official term, and until he shall deliver all the property which he may receive as such treasurer [or, "trustee"] to his successor in said office, or to such other person as the said association or its authorized officers may direct, according to the provisions of the constitution, by-laws, rules and regulations, of said association now existing, or which may be by said association adopted ; then this obligation shall be void.

. . . . . [L.S.]

. . . . . [L.S.]

Signed, sealed and delivered in presence of . . . . . [L.S.]

.. .. .

*Another Form of Bond of Treasurer or Trustee of an Association.*

Know all men by these presents : That we, . . . . ., as principal, and . . . . . and . . . . . as sureties, all of the city of . . . . ., in the county of . . . . ., and state of . . . . ., are held and firmly bound unto . . . . . and . . . . . in the sum of . . . . dollars, lawful money of the United States, to be paid unto the said . . . . . and . . . . ., their successors in office, or their certain attorneys, executors, administrators or assigns ; to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the . . . . day of . . . ., one thousand eight hundred and . . . .

The condition of this obligation is such : That whereas, the above-named . . . . . has been chosen by an association known as the . . . . Association, treasurer [or, "one of the trustees"] of said association, by reason whereof, and as such treasurer [or, "trustee"], he will receive into his hands and

possession divers sums of money, goods, and other things, the property of said association; and is bound to keep true and accurate accounts of said property, and of his receipts and disbursements for and on account of said association.

Now, therefore, if the said . . . . shall well and truly perform all and singular the duties of treasurer [or, "trustee"] of said association, for and during his official term, and until he shall deliver all the property which he may receive as such treasurer [or, "trustee"] to his successor in office, or to such other person as the said association or its authorized officers may direct, according to the provisions of the constitution, by-laws, rules and regulations, of said association now existing, or which may be by said association adopted; and shall keep true and just accounts of all property belonging to the said association that may come into his hands; and shall submit to the said association, or to persons by them thereunto appointed, his said accounts and vouchers therefor, whenever he shall thereto be properly requested; and shall, at the expiration of his term of office, by any cause whatever, deliver up to his successor in office all the property of the said association that may be found to remain in his hands, and his books of accounts, and the vouchers thereunto belonging, then this obligation shall be null and void; otherwise to remain in full force and virtue.

Signed, sealed, etc., [as in other bonds].

*Bond to Produce Bill of Lading.*

Know all men by these presents: That we, . . . . . and . . . . ., composing the firm of . . . . . & Co., and . . . . . and . . . . ., of city and county of . . . . . and state of California, are held and firmly bound, unto the owners, master and consignees, of the ship . . . . ., in the penal sum of . . . . . dollars, to be paid unto the said owners, master or consignees, their executors, administrators or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such: That whereas, . . . . . & Co., claim to be true and lawful consignees of certain goods, wares and merchandise, now on board the ship . . . . ., of which they hold no valid bill of lading: Now, in consideration of the delivery of said goods to the said . . . . . & Co., by . . . . . & Co., the consignees of said ship . . . . ., without presentation of bill of lading, we, the undersigned, hereby agree to furnish to the said consignees of said ship, with, . . . . . days from the date hereof, a proper bill of lading of said goods, duly filled up to the order of said . . . . . & Co. or in default of furnishing such bill of lading, we hereby agree to hold the said owners, master and consignees, of said ship harmless against the claims for delivery of any party or parties whatsoever, and bind ourselves to pay to the said owners, master or consignees, all loss or damage which they may be called upon to pay in consequence of such delivery of said goods to the said . . . . . & Co.

Now, if the said . . . . . & Co., do well and truly fulfill the conditions of the above agreement, then this obligation is to be void and of no effect, otherwise to remain and be in full force and virtue.

In witness whereof, we have hereunto set our hands and seals, this .... day  
of .... eighteen hundred and ....

In presence of

.....	..... [L.S.]
.....	..... [L.S.]
.....	..... [L.S.]
.....	..... [L.S.]

*Bond of Indemnity.*

Know all men by these presents: That I, .... of the city of ....., in the state of ....., am held and firmly bound, unto .... of the city of ....., in the state of ....., in the sum of ..... and ..... dollars, lawful money of the United States of America, to be paid to the said ....., his executors, administrators or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal. Dated the .... day of ....., in the year of our Lord, one thousand eight hundred and .....

Whereas, heretofore, one .... filed his bill in the district court of the United States, for the .... district of ....., against the steamship ....., upon cause of action alleged to have accrued to him in the early part of the year 18...; and whereas such proceedings were afterward had in said cause in said court, that a judgment or decree was made and entered therein, on the .... day of ....., A.D. 18..., that the said .... do recover in said action, the sum of ..... and ..... dollars, for his damages therein, and also the sum of ..... and ..... dollars and ..... cents, for his costs of said action, and that the said steamship be condemned and sold to satisfy him for his said damages and costs; and whereas, at the time when said alleged cause of action accrued, the above bounden obligor was the mortgagee and owner of the said steamship, and liable ever for the payment of such damages and costs; and whereas, an appeal has been taken from the said judgment or decree, to the circuit court of the United States for the districts of .....; and whereas, the said above-bounden obligor has applied to the above-named obligee to become one of the sureties in the stipulation to be given on the said appeal to stay the execution of said decree and abide the judgment and decree of the appellate; and whereas, the said obligee hath consented to become such surety, upon being indemnified against all loss or damage by reason thereof, and hath executed and acknowledged the necessary stipulations on such appeal.

Now, the condition of this obligation is such, that if the said obligor, the said .... and his heirs, executors and administrators, shall and do at all times hereafter, well and truly save and keep the said obligee, ....., his executors and administrators, harmless of and from all actions, costs, damages and counsel fees, of and from and by reason of or growing out of such suretyship, and shall well and truly repay or cause to be repaid to the said obligee, his executors or administrators, on demand, any and all such sum and sums of money that he may be required to pay as such surety as aforesaid, then this obligation to be void; else to remain in full force and virtue.

..... [L.S.]

By ....., his attorney in fact.

Sealed and delivered in presence of .....

*Legatees' Bond.*

Know all men by these presents, that we, . . . . ., principal and . . . . . and . . . . ., of, etc., are held and firmly bound unto . . . . . and . . . . ., of, etc., executors of the last will and testament of . . . . ., deceased, late of the town of . . . . ., in the sum of . . . . . dollars, lawful money of the United States, to be paid to the said . . . . . and . . . . ., executors, as aforesaid, the survivor or survivors, or his or their assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the . . . . . day of . . . . ., one thousand eight hundred and . . . . .

Whereas, in and by the last will and testament of the said . . . . . deceased, a legacy of . . . . . thousand dollars is bequeathed to the said . . . . ., which has been paid to him by the said . . . . . and . . . . ., executors as aforesaid.

Now, the condition of this obligation is such, that if any debts against the deceased, above named, shall duly appear and which there shall be no other assets to pay, and if there shall be no other assets to pay other legacies or not sufficient, then the said . . . . . shall refund the legacy so paid or such ratable proportion thereof, with the other legatees of the deceased, as may be necessary for the payment of such debts and the proportional parts of other legacies, if there be any, and the costs and charges incurred by reason of the payment of the said . . . . .; and that if the probate of the will of the said deceased be revoked or the will declared void, then the said . . . . . shall refund the whole of the legacy, with interest, to the said . . . . . and . . . . ., their executors, administrators or assigns.

Sealed, etc., [as above].

. . . . . [L.S.]

. . . . . [L.S.]

.. . . . [L.S.]

*Bond, conditioned that if the Interest is not paid within a certain time after it is due, the whole Sum, Principal and Interest, shall, at the option of the Oblige, be due immediately.*

Know all men by these presents: That I, . . . . ., of the . . . . . of . . . . . in the county of . . . . ., and state of . . . . ., am held and firmly bound unto . . . . ., of the same place, in the sum of . . . . . dollars, lawful money of the United States, to be paid to the said . . . . ., his executors, administrators or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them, firmly by these presents. Sealed with my seal. Dated the . . . . . day of . . . . ., one thousand eight hundred and . . . . .

The condition of the above obligation is such, that if the above bounden . . . . ., or his heirs, executors and administrators, shall well and truly pay or cause to be paid, unto the above-named . . . . ., his executors, administrators or assigns, the just and full sum of . . . . . dollars, on the . . . . . day of . . . . ., which will be in the year one thousand eight hundred and . . . . ., and the interest thereon, to be computed from the date hereof, at and after the

rate of .... per cent. per annum, and to be paid ....., then the above obligation to be void ; else to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of .... days, then and from thenceforth, that is to say, after the lapse of the said .... days, the aforesaid principal sum of ..... dollars, together with all arrearage of interest thereon, shall, at the option of the said ....., his executors, administrators and assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything herein-before contained to the contrary thereof, notwithstanding.\*

Sealed and delivered in the presence of

..... [L.S.]

.....  
.....

#### *Bond for a Deed.*

Know all men, etc. : Now, the condition of this obligation is such, that if the above bounden obligor shall, on the .... day of ..... next, make, execute and deliver, unto the said ..... [provided that the said ..... shall, on or before that day, have paid to the said obligor the sum of ..... dollars, the price by said ..... agreed to be paid therefor], a good and sufficient conveyance, in fee simple, with the usual covenants, of all that certain piece or parcel of land [here describe the land], then this obligation to be void ; otherwise, to remain in full force, virtue and effect.

Sealed and delivered in the presence of

..... [L.S.]

.....  
.....

### BOOK ACCOUNTS.

**When "Books" may be Used as Evidence.**—Account books may be given in evidence, as proof of the charges in them, in courts of law. Before they will be received, the person offering them must prove them to be :

- 1st. His book of original entries.
- 2d. That it was kept by the witness.
- 3d. That the entries were made by him at the time therein stated.

If the party testifying kept no clerk, he must so state, and

\* If an agreement is made to compound the interest due, insert the following clause : "And the said interest shall be added to the principal as fast as it becomes due, and shall bear the same interest as the principal."



also that he kept no other books. When these facts are proven, and also that the person offering them has the general reputation of keeping correct books, by those dealing with him, they make out a *prima facie* case of themselves. In California and elsewhere, where interest does not exclude a witness, the books are used to refresh the memory of the witness, and no proof need be made of correctness, general reputation, etc.

**An Account**, purporting to be drawn out by the party himself, from his original and daily minutes, is not admissible in evidence, though the book containing such statement should be accidentally destroyed, unless it could be proved that the items of the amount drawn out had actually existed in the party's books.

**If the Party is Dead**, the books may be offered by the executor or administrator, he making oath that they came to his hands as the genuine and only books of account of the deceased, with proof of the party's handwriting.

**If the Clerk** who made the entries is dead or insane, the book is admissible, upon proving his handwriting.

**When the Day-book** contains marks which show that the items have been transferred to a ledger, the ledger must be produced.

**It is Usual to Prefix** the initials E. & O. E. (for errors and omissions excepted) to the signature to accounts, but the omission of those letters forms no bar to the subsequent correction of errors. The settlement and discharge of an account is no bar to a claim for any other demand not included in the settled account. It may be impeached by proof of unfairness, mistake or fraud.

## BOTTOMRY.

**Bottomry, Maritime Law.**—See BONDS.

## BOUNDARY

**Boundary.**—Any separation, natural or artificial, which marks the confines or lines of two contiguous estates.

**A Natural Boundary,** is a natural object remaining where it was placed by nature. A river or stream is a natural boundary, and as a general rule, the center of the stream is the line.

**An Artificial Boundary.** is one erected by man, such as a wall, fence or monument.

## BREACH.

**Breach.**—In contracts, the violation of an obligation, engagement or duty.

## BREACH OF THE PEACE.

**Breach of the Peace.**—A violation of public order. The offense of disturbing the peace. See **CRIMES AND PUNISHMENTS**.

## BREACH OF TRUST.

**Breach of Trust.**—The willful misappropriation, by a trustee, of a thing which has been lawfully delivered to him in confidence.

## BRIBERY.

**Bribery.**—The receiving or offering any reward by or to any person whose ordinary profession or business relates to the administration of public justice, in order to influence his behavior in office, and so incline him to act contrary to his duty and the known rules of honesty. The law is very severe when it lays its hand on a briber's shoulder ; and so salutary have been its penalties that the officers of the different states of the Pacific, including the several legislatures, have seldom been suspected of this offense. It is

feared that bribery and bribes will become more frequent when the population becomes more dense. See CRIMES AND PUNISHMENTS.

## BROKERS.

**Broker.**—A broker is a person who is engaged for others in the negotiation of contracts relative to property with the custody of which they have no concern. A broker is frequently the agent of both parties ; but, in the first place, he is deemed the agent only of the person by whom he is originally employed, and does not become the agent of the other until the bargain or contract has been definitely settled as to the terms between the principals.

**Bill and Note Brokers.**—Those who negotiate the purchase and sale of bills of exchange and promissory notes. Their commission is paid by the seller of the securities ; and it is not their custom to disclose the names of their principals. There is an implied warranty that what they sell is what they represent it to be, and should a security sold by them turn out to be a forgery, they are responsible for the loss.

**Exchange Brokers.**—Those who negotiate bills of exchange, drawn on foreign countries or on places in the country in which they live:

**Insurance Brokers.**—Those who procure insurance and negotiate between insurers and insured.

**Merchandise Brokers.**—Those who negotiate the sale of merchandise, without having possession or control of it as factors have.

**Real Estate Brokers.**—Those who negotiate the purchase or sale of real property. They sometimes procure loans on mortgage security, collect rents, and attend to the leasing and letting of houses and lands.

**Ship Brokers.**—Those who negotiate the sale and purchase of ships, and the business of freighting vessels. Their commission is paid by the seller only.

**Stock Brokers.**—Those employed to buy and sell shares of stock in incorporated companies and the indebtedness of governments. In large cities, stock brokers are associated together under the name of the “board of brokers.” Membership of such boards is forfeited for default in carrying out contracts; and rules are prescribed for the conduct of business which are enforced on all members. The purchases and sales are made at sessions of the board, and are officially recorded and published by an officer of the association. Stock brokers charge commissions to both the buyers and sellers of stocks.

**Pawnbrokers.**—Those who lend money in small sums on the security of personal property, such as watches, coats and other articles, of ornament or use. Hard times is their pasture, yielding to them full crops. “Tightness” in the money market is, to them, a day of rejoicing; and absence of rain and dry signs in seed time, is a fountain of joy. Other brokers wax thin on a tight money market, while they grow sleek and fat. What is other brokers’ poison, is their meat. In California, they are licensed by the authorities and placed under the surveillance of the police. See PAWNBROKER.

## BURGLARY.

**Burglary.**—The breaking and entering the house of another, in the night-time, with intent to commit a felony therein. See CRIMES AND PUNISHMENTS.

## BY-BIDDING.

**By-bidding.**—Bidding with the connivance or at the request of the vendor of goods at auction, without an intent to purchase, for the purpose of obtaining a higher price than would otherwise be obtained.

**By-Bidders** are also called *puffers*. The practice of *puffing* is allowable if it be done fairly, with an intention only to prevent a sale at an unduly low price.

## CANCELLATION.

**Cancellation.**—The act of crossing out a writing. The manual operation of tearing or destroying a written instrument.

**Canceling a Will,** is a revocation; and the destruction or obliteration need not be complete, but must be by the testator, or in his presence and by his direction and consent.

## CANVASS.

**Canvass.**—The act of examining the returns of votes for a public officer. In the states of the Pacific, the supervisors or county commissioners act as a board of canvassers, and declare the result of elections.

**A Party** may go behind the canvass, to the ballots, and show the number of votes cast for him or his candidate.

## CAPACITY.

**Capacity.**—Ability, power, qualification or competency, to act in legal proceedings or in office. Infants have not the capacity to contract, generally.

## CAPITAL CRIME.

**Capital Crime.**—One for which the punishment of death is inflicted. Murder, in the first degree, is a capital crime, yet it may be punished by imprisonment for life on commutation of sentence. See **CRIMES AND PUNISHMENTS**.

## CAPITAL PUNISHMENT.

**Capital Punishment.**—The punishment of death.

## CAPITAL STOCK.

**Capital Stock.**—The sum divided into shares, which is

raised by mutual subscription of the members of a corporation. It is said to be the sum upon which assessments may be made, and on which dividends are to be paid.

## CARRIER.

**Carrier.**—One who undertakes to transport goods from one place to another. They are either common or private. See COMMON CARRIER.

## CARRIERS OF PASSENGERS.

**Carriers of Passengers and their Duty.**—Carriers of passengers are such as carry persons for hire. They are bound to carry all who offer; but they will be excused when there is an unexpected press of travel, and all their means of transportation are exhausted.

**Degree of Care Required of Them.**—They are not *insurers* of the safety of their passengers, as common carriers of goods are, but they are bound to the highest degree of care and watchfulness, in regard to all their appliances for the conduct of their business; and as far as human foresight can secure the safety of passengers, they are bound to exercise it.

**They may Demand Fare in Advance.**—They have a right to demand fare in advance; but this will not release them from responsibility, if they have not exacted it in advance. Where servants of passenger carriers are allowed to carry parcels or packages of goods, the principal is responsible for any damage to them, although the servant is allowed to keep to his own use the freight-money as his perquisites.

**Degree of Care Required of Carriers of Passengers.**—In regard to the particulars of the duty of carriers of passengers, as to their duty in providing the best machinery and servants, the decisions are numerous, but they all concur in the result, that if there was anything more which could have been done by the carrier to insure the safety of his passen-

gers, and injury occurs in consequence of the omission to do so, he is liable. If any accident occurs, by reason of any defect in machinery or neglect on the part of servants, *which might have been avoided* by the exercise of the *greatest watchfulness* on the part of the carrier, he is responsible for any injury sustained; but where the defect was one which no degree of watchfulness in the carrier or his servants would enable him to discover, he is clearly not liable.

**Where Negligence of Passenger Contributes to Injury.**

—If, by negligence on his own part, a passenger is injured, the carrier is clearly not liable, but where the passenger's negligence contributed but remotely to the injury, and the carrier's culpable want of care was its immediate cause, a recovery may be had. So, also, if the defendant is guilty of such a degree of negligence that the plaintiff could not have escaped its consequences, he may recover, notwithstanding there was a want of prudence on his part. Passengers leaping from cars or other vehicles, either by land or water, from any just sense of peril, may, if they are injured, still recover.

**Who they need not Carry.**—They are not bound to carry persons of offensive habits, or disorderly persons, or those infected by contagion, or otherwise unsuitable companions for other passengers. They are liable in damages for failing to deliver passengers in reasonable time, according to their public announcements. In such case, the actual, direct damage alone can be recovered.

**Who liable for Injury.**—When tickets are sold for an entire route composed of several companies, not partners, and an injury occurs, the company on whose route it occurred is alone liable.

**Measure of Damages for Injuries.**—When a passenger is injured by the culpable negligence of a carrier, damages may be recovered for not only the injuries actually sustained up to the time of trial, but also prospective damages likely to accrue from the injury, as he can have but one action.

**They may Establish Rules.**—They may establish reasonable regulations to govern passengers, and it is their duty to caution them against danger; and if their regulations require prepayment of fare, they may charge extra to all who neglect or refuse to comply. They may require passengers to go through in the conveyance in which they started, and if they do not comply, the fare already paid will be forfeited.

**When a Passenger procures a ticket marked, "good for this trip," or, "this day only,"** and he is unavoidably detained, he may lawfully claim to go on the same ticket on a subsequent trip or day. See **COMMON CARRIERS—ACT OF GOD**

### CARTE BLANCHE.

**Carte Blanche.**—The signature of one or more persons on a white paper, with a sufficient space left above it to write a note or other writing. If authority is given to fill up a blank thus left, such indorsements are binding.

### CASE.

**Case.**—A question contested before a court of justice. An action, or suit.

### CASH BOOK.

**Cash Book.**—A book in which a merchant enters an account of all the cash he receives or pays.

### CASHIER.

**Cashier.**—An officer who is entitled, by his office, to take care of the cash or money of his employés. Banks are bound, as a general rule, by the acts of the cashier within the scope of his authority, express or implied.



## CAUSE.

**Cause.**—A suit or action. Any question contested before a court of justice.

## CAUSE OF ACTION.

**Cause of Action.**—Matter for which an action may be brought. When wrong has been committed, or a breach of duty has occurred, the cause of action has accrued, although the claimant may be ignorant of it. When a debt of any kind becomes due, a cause of action has accrued.

## CAVEAT.

**Caveat.**—A legal notice not to issue a patent of a particular description to any person without allowing the caveator an opportunity to establish his priority of invention. See **PATENTS**.

## CAVEAT EMPTOR.

**Caveat Emptor.**—[Let the purchaser take care.] In every sale of real property, a purchaser's right to relief, on account of defects or incumbrances in or upon the property sold, depends solely upon the covenants for title which he has received.

**In Sales of Personal Property**, the purchaser buys at his own risk, unless the seller gives an express warranty, or unless the law implies a warranty from the circumstances of the case or the nature of the thing sold, or unless the seller be guilty of fraudulent misrepresentation or concealment in respect to a material inducement to the sale. See **MISREPRESENTATION—CONCEALMENT—WARRANTY**.

## CENSUS.

**Census.**—An official reckoning; an enumeration of the

inhabitants and wealth of a country. The census of the United States is taken every tenth year, in accordance with the provisions of the constitution. It was taken in 1860, and is to be taken in 1870, and every tenth year thereafter. On the returns of the census, representation in congress and the state legislatures is based.

### CERTIFIED CHECK.

**Certified Check.**—A check drawn on some bank which has been recognized by the proper officer as a valid appropriation of the amount of money therein specified to the person, or his assignee therein named, and which bears upon itself the evidence of such recognition.

**When the Check is Certified,** the officer authorized or who assumes to bind the bank in that manner, writes his name across the face of the check, and he sometimes adds, "certified." When this is done the bank is responsible for the sum stated in the check.

### CERTIORARI.

CALIFORNIA, NEVADA, IDAHO AND ARIZONA.

**Writ of Certiorari, and how Issued.**—This writ may be granted on application, by any court of this state, except a justice's, recorder's, or mayor's court; the writ shall be granted in all cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal nor in the judgment of the court any plain, speedy and adequate remedy.

**Application, how Made.**—The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

**How Directed.**—The writ may be directed to the inferior

tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

**Contents of Writ.**—The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ, a transcript of the record and proceedings [describing or referring to them, with convenient certainty], that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

**Proceedings may be Stayed, or not.**—If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court; but if omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

**Service of the Writ.**—The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

**Extent of Review.**—The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board or officer, has regularly pursued the authority of such tribunal, board or officer.

**Hearing and Judgment**—If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and thereupon give judgment, either affirming, annulling or modifying, the proceedings below.

**Copy of Judgment to be sent to Inferior Tribunal.**—A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board or officer, having the custody of the record or proceeding certified up.

**Judgment Roll and Appeals.**—A copy of the judgment,

signed by the clerk, entered upon, or attached to, the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

## FORM.

In the .... court of the .... county of ....

.....	}	CERTIORARI.
Plaintiff, against		
..... Defendant.		

The people of the state of .... to ...., greeting :

Whereas, it manifestly appears to us, by the affidavit of ...., the part.. beneficially interested, that in a certain action pending before you, against ...., at the suit of ...., you, exercising judicial functions, have exceeded your jurisdiction, and that there is no appeal nor any other plain, speedy and adequate remedy, and being therefore willing to be certified of the said action or proceedings :

We therefore command you, that you certify and send to our .... court, of the ...., county of ...., at the ...., in the ...., county of ...., on the day of ...., A.D. 18.., annexed to the writ a transcript of the record and proceeding in the action aforesaid, with all things touching the same as fully and entirely as it remains before you, by whatsoever names the parties may be called therein, that the same may be reviewed by our said .... court, and that our said .... court may further cause to be done thereupon what it may appear of right ought to be done, and in the meantime we command and require the said .... to desist from further proceedings in the matter so to be reviewed.

Witness, the honorable ...., judge of our .... court of the ...., at the ...., in the ...., county of ...., and the seal of said .... court, this .... day of ...., A.D., 18..

..... Clerk,  
By ..... Deputy Clerk.

## CESTUI QUE TRUST.

**Cestui que Trust.**—This phrase often occurs in judicial proceedings. It means he for whose trust another person is seized of property of any description. He who has a right to an interest in and out of an estate the legal title to which is vested in another, is a *cestui que trust*.

## CESTUI QUE USE.

**Cestui que Use.**—He for whose benefit land is held by another person. He has the right to take profits of lands of which another has the legal title and possession.

## CHAMBERS.

**Chambers.**—The private room of a judge. When a case or motion is made or heard, before a judge out of court, it is said to be made or heard “in chambers.” Orders and decrees may be made in chambers when permission is given by law.

## CHAMPERTOR.

**Champertor.**—One who institutes suits and prosecutes them at his own costs upon condition of having part of the gain.

**Champerty.**—A bargain with the plaintiff or defendant, in a suit for a portion of the land or other matter sued for in case of a successful termination of the suit, which the champertor undertakes to carry on at his own expense. In other days, this was an offense at law, punishable by fine. A common instance was when an attorney agrees with a client to collect by suit a demand, and retain a part for his fee.

## CHARTER PARTY.

**Charter Party.**—A contract by which the owner of a ship or other vessel, lets the whole or a part of her to a merchant or other person, for the conveyance of goods on a particular voyage, in consideration of the payment of freight.

**It should Contain**—1st. The name and tonnage of the vessel.

2d. The name of the captain.

3d. The name of the letter and freighter.

4th. The place and time agreed upon for the loading and discharge.

5th. The price of the freight.

6th. The demurrage or indemnity in case of delay.

7th. Such other conditions as the parties may agree upon.

### CHASTITY.

**Chastity.**—That virtue which denies unlawful commerce on solicitation by one of opposite sex. A woman may defend her chastity by killing her assailant.

### CHATTEL.

**Chattel.**—Every species of property which is less than a freehold.

**Chattels Real**, are interests which are annexed to the land, as a lease for years of land.

**Personal Chattels** are things movable. This book is a personal chattel. Any description of personal property not attached permanently to the ground.

**Chattel Mortgage.**—A mortgage of personal property. See MORTGAGE.

### CHECK.

**Check.**—A written or printed order, addressed to a bank by a party having money on deposit, desiring it to pay, on presentation, to a person therein named or to bearer, or to his order, a named sum of money. See CERTIFIED CHECK—BILLS AND NOTES.

### CHOSE IN ACTION.

**Chose in Action.**—A right to receive or recover a debt or money, or damage for breach of contract, or for a wrong connected with a contract. If A owes to B a sum of money, the right to recover, is a chose in action.

### CIRCUIT COURTS.

**Circuit Courts.**—Courts whose jurisdiction extends over

several counties or districts, and of which terms are held in the various counties.

**In the United States**, courts are held in each district as provided by law, by United States circuit judges. These courts have such jurisdiction as is conferred by congress, and also common-law jurisdiction.

### CITATION.

**Citation.**—A writ issued out of a court, commanding a person therein named to appear on a day named, and do some act in the writ mentioned, or show cause why he should not.

**This Writ** is common in probate practice, and it may be considered as a summons.

### CITIZEN.

**Citizen.**—Formerly, an inhabitant of a city. By virtue of the fourteenth amendment of the constitution of the United States: "All persons born or naturalized in the United States: and *subject* to the *jurisdiction* thereof, are citizens of the United States and of the states wherein they reside."

**By Virtue of this Amendment**, all Indians, Chinese and other *persons*, born or naturalized in the United States, are citizens: *provided*, they are subject to the *jurisdiction thereof*. We have only then to ask: "Would the *person* born in the United States be subject to the *jurisdiction* of the United States if he should lead or join a rebellion or riot, or commit any crime whatever?" If the answer is in the affirmative, then such person is a citizen. See VOTER.

### CIVIL ACTION.

**Civil Action.**—A personal action, which is instituted to compel payment, or the doing of some other thing which is purely civil.

**On the Pacific Coast**, all actions which are not criminal are said to be civil.

### CIVIL DEATH.

**Civil Death.**—The change of state of a person, which is considered, in the law, as equivalent to death. A person sentenced to imprisonment for life is, in law, considered the same as dead.

### CIVIL OFFICER.

**Civil Officer.**—An officer of the government not holding under military authority.

### CIVIL REMEDY.

**Civil Remedy.**—The remedy which the party injured by the commission of a wrongful act has, by action, against the party committing it, as distinguished from the proceeding by indictment, by which the wrongdoer is punished.

### CLAIM.

**Claim.**—The demand entered of record of a mechanic, contractor or material-man, for work done or material furnished in the erection of a building or other superstructure. See **LIENS**, **MECHANICS**'.

**The Assertion of a Liability** to the party making it to do some service or pay a sum of money.

**The Possession** of a settler upon the public lands of the United States; the lands which such possessor holds possession of. See **PRE-EMPTION**.

### CLEARANCE.

**Clearance.**—A certificate given by a collector of a port, in which it is stated, that the master of a ship or vessel named and described, bound for a port named, has entered and



cleared his ship according to law. Such a certificate evidences the right of a vessel to depart on her voyage

## CLEARING-HOUSE.

**Clearing-house.**—An office where bankers settle daily with each other the balances of their accounts.

## CODICIL.

**Codicil.**—An addition to or qualification of a last will and testament. A codicil is part of a will, and is to be construed as such. See **WILLS**.

## COHABIT.

**Cohabit.**—To live together in the same house claiming to be married. To live together in the same house.

## COLLECTOR OF THE CUSTOMS.

**Collector of the Customs.**—An officer of the United States, appointed for the term of four years, but removable at the pleasure of the president, subject to the provisions of the tenure of office act.

**His Duties** are to receive all reports, manifests and documents, to be made or exhibited in the entry of any ship or vessel; to record all manifests, receive the entries of all ships or vessels, and of all goods imported in them. He shall, together with the naval officer (when there is one), or alone (when there is none), estimate the amount of duties payable thereupon, indorsing the amounts upon the respective entries; receive all moneys paid for duties, and take bonds for securing the payment thereof; grant permits for the unlading and delivery of goods; and shall, with the approbation of the principal officer of the treasury department, employ proper persons as weighers, gaugers, measurers and inspectors, at the several ports within his district;

and, also, with the like approbation, provide, at the public expense, storehouses for the safe keeping of goods, and such scales, weights and measures, as may be necessary.

### COLLUSION.

**Collusion.**—An agreement between two or more persons to defraud a person of his rights, by the forms of law, or to obtain an object forbidden by law.

**Collusion and Fraud** of every kind vitiate all acts which are infected with them, and render them void.

### COMMERCIAL LAW.

**Commercial Law.**—A phrase employed to denote those branches of the law which relate to the rights of property and relations of persons engaged in commerce.

### COMMISSION.

**Commission.**—A body of persons authorized to act in a certain matter.

**The Act** of perpetrating an offense.

**An Instrument**, issued by a court of justice, or tribunal, to authorize persons to take depositions, or do any other act by authority of such court or tribunal, is called a commission.

**Letters granted** by the government under the public seal, to a person appointed to office, giving him authority to perform the duties of his office. Such commission is not the appointment, but only evidence of it, and as soon as it is signed and sealed vests the office in the appointee.

### COMMITMENT.

**Commitment.**—The warrant or order by which a court or magistrate directs a ministerial officer to take a person to prison. See **MAGISTRATE**.

## COMMON CARRIERS.

**Common Carriers.**—Such as carry goods for hire indifferently for all persons. The different express, railway, and freight-carrying steamship companies, truckmen, wagoners, carmen and porters, are common carriers.

**Common Carriers** are responsible for all loss or damage during transportation from whatever cause, except the act of God or the public enemy. See ACT OF GOD.

**Carriers**, when they undertake the general business of carrying every kind of goods, are bound to carry all who offer; and if they refuse, without just excuse, they are liable to an action. But they may restrict their business within such limits as they may deem expedient; and are not bound to accept goods out of the line of their usual business.

**They may require freight to be paid in advance; and have a lien upon the goods for freight and for advances made to other carriers.**

**The Bill of Lading** is generally the written evidence of the contract between the parties, and is expected to contain all the exemption from general responsibility which it is competent for the carrier to claim.

**As between the immediate parties**, the bill of lading is not conclusive as to the quantity or condition of the goods at the time of shipment, especially when there was no opportunity to inspect them. See BILL OF LADING.

**Their Responsibility** begins upon the delivery of the goods for immediate transportation. A delivery at the usual place of receiving freight, or to the employes of the company in the usual course of business, is sufficient. The responsibility terminates after the arrival of the goods at their destination, and a sufficient time has elapsed for the owner to receive them in business hours. After that, they may be placed in a warehouse, and the carrier is only responsible for ordinary care. See CARRIERS OF PASSENGERS.

## COMMON LAW.

**Common Law.**—Common law frequently occurs in this work ; and as its meaning is imperfectly understood by not a few merchants, farmers, mechanics and other unprofessional men, it is necessary to endeavor to make its meaning clear to all.

**Common Law** is that system of law, or form of the science of jurisprudence, which has prevailed in England and the United States of America, in contradistinction to other great systems, such as Roman or civil law.

Those principles, usages and rules of action, applicable to the government and security of persons and of property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. (1 Kent's Com. 492.) The law of any country to denote that which is common to the whole country, in contradistinction to laws and customs of local application.

The most prominent characteristic which marks this contrast, and perhaps the source of the distinction, lies in the fact that in the common law, with the stiff rule of long antiquity on the one hand, nor on the other the sudden changes of a present arbitrary power, are allowed ascendancy, but under the sanction of a constitutional government each of these is set off against the other, so that the will of the people, as it is gathered from long-established custom, and from the expression of the legislative power, gradually forms a system ; just, because it is the deliberative will of a free people ; stable, because it is the growth of centuries ; progressive, because it is amenable to constant revision of the people.

The phrase, "Common Law," is used in contradistinction to "statute law ;" and to designate unwritten, as distinguished from written, law. It is that law which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature by an express act, which is the

criterion by which it is distinguished by statute law. When it is spoken of as the *lex non scripta*, it is meant that it is law not written by the authority of the law. The statutes are the expression of law in a written form, which form is essential to the statute. The decision of a court which establishes or declares a rule of law, may be reduced to writing and published in the reports; but this report is not the law; it is only the evidence of the law; it is but the written account of one application of a legal principle, which principle, in the theory of the common law, is still unwritten. It is only by the legislative power that law can be bound by phraseology and by forms of expression. The common law eludes such bondage; its principles are not limited or hampered by the mere forms in which they may have been expressed, and the repeated adjudications declaring such principles are but the instances in which they have been applied. The principles themselves are still unwritten, and ready, with all the adaptability of truth, to meet every new and unexpected case. Hence it is said that the rules of the common law are flexible.

**Legislative Action.**—One of the first acts of the legislatures of California, Nevada and Idaho, was the passage of the following act:

“The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of the state of California [Nevada, Idaho], shall be the rule of decision in all the courts of this state.”

In this Country, when the courts inquire into a legal proposition, they first examine the statutes, and if they are silent on the subject under investigation, they turn to the common law as found in the law reports, and are governed by the law as there laid down.

## COMMON NUISANCE.

**Common Nuisance.**—One which affects the public in general, and not merely some particular person. See NUISANCE.

## COMMUTATION.

**Commutation.**—The change of a punishment to which a person has been condemned, into a less severe one. This can only be granted by the executive authority, in which the pardoning power resides. See PARDONS.

## COMPETENCY.

**Competency.**—The legal fitness or ability of a person to be heard on a trial of a cause. It also means the quality of evidence which renders it proper to be given on the trial of a cause.

A Witness may be *competent*, and, on examination, his story may be so contradictory and improbable that he may not be believed; on the other hand, he may be *incompetent*, and yet be perfectly credible, if he were examined. See WITNESSES.

## COMPLAINT.

**Complaint.**—The allegation made to a proper officer that some person has been guilty of an offense against law. See MAGISTRATE.

The Written Statement of the plaintiff's cause of action, filed in a court of justice, on the commencement of a civil suit. The defendant's reply is his answer.

## COMPROMISE.

**Compromise.**—An agreement made between two or more parties as a settlement of the matters in dispute between them. Such settlements are sustained in law. See CRIMES AND PUNISHMENTS.

## CONCEALMENT.

**Concealment.**—The improper suppression of any fact or

circumstance by one of the parties to a contract, from the other, which in justice ought to be known.

**The Omission**, by an applicant for insurance, to state facts known to him, material to the risks proposed to be insured against, or omission to state facts expressly inquired about by the underwriters, to whom application for insurance is made, whether the same are or not material to the risk. See **INSURANCE**.

**Fraudulent Concealment** avoids the contract, or renders the party using it liable for the damages arising in consequence thereof. The concealment must be of such facts as the party is bound to communicate. When confidence is reposed, concealment becomes more fraudulent.

## CONDITION.

**Condition**.—A clause in a contract, which has for its object to suspend, rescind or modify, the principal obligation; or, in case of a will, to suspend, revoke or modify, the devise or bequest.

**A Qualification** or restriction annexed to a conveyance of lands, whereby it is provided, that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged or be defeated.

**In Mortgages**, a condition is inserted, providing that the conveyance shall be void, upon certain conditions therein named, as the payment of the same secured.

## CONDONATION.

**Condonation**.—The conditional forgiveness or remission by a husband or wife, of a matrimonial offense which the other has committed. Condonation is chiefly applied to the offense of adultery. As a general rule, any cohabitation with the guilty party, after the commission of the offense, and with knowledge or belief, on the part of the

injured party, of its commission, will amount to conclusive evidence of condonation.

## CONFEDERACY.

**Confederacy.**—In criminal law, confederacy is an agreement, between two or more persons, to do an unlawful act or an act which, though not unlawful in itself, becomes so by the confederacy. This offense is the same as conspiracy.

## CONFESSION.

**Confession.**—The voluntary declaration made by a person who has committed a crime, to another, of the agency or participation which he had in the same. When a person is arraigned (that is, brought before a court to plead to or answer the charge against him) for an offense, if he acknowledges himself guilty, such acknowledgment is termed a *confession*, and is generally designated as a plea of "guilty."

**Judicial Confessions** are such as are made in open court or before a magistrate, in the due course of judicial proceedings.

**Extra Judicial Confessions** are those made by a defendant elsewhere than before a magistrate, or in open court.

**Confessions** are not admissible in evidence, when they are obtained by temporal inducement, by threats, promise or hope of favor, held out to the defendant in respect of his escape from the danger against him, by a person in authority. If an officer or person in authority over the prisoner informs him that it will be better for him to confess, and that it will not be as hard for him if he does—any confession made under such or similar inducements cannot be used against the prisoner. It is the officer's duty to inform the prisoner that any confession made will be used against him ; then a confession will be admitted as evidence.



## CONFESSION OF JUDGMENT.

CALIFORNIA, NEVADA AND IDAHO.

**Judgment by Confession.**—Judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner following :

**Statement in Writing.**—A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect :

1st. *It shall authorize the entry of judgment for a specified sum.*

2d. *If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.*

3d. *If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.*

**Statement to be Filed.**—The statement shall be filed with the clerk of the county in which the judgment is to be entered, who shall indorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment indorsed, shall thereupon become the judgment roll.

**Practice in Other States.**—In some of the states where the statutes are similar to the foregoing, it is not uncommon to give a promissory note, and confess judgment for the sum to become due thereon, provided it is not paid at maturity. Indeed, the foregoing sections of the law expressly permit judgment to be confessed for sums to become due, in any form or manner, without limitation.

**If the Form given below** is made use of when the note is not yet due, the holder of the note should, as soon as it is due, take it to the clerk of the court, and order judgment and execution.

## FORMS.

*Confession to Secure Note.*

In the district court of the .... judicial district, county of ...., state of ....

..... }  
 vs. }  
 ..... }

I, ...., defendant above-named, do hereby confess judgment in this case in favor of the said plaintiff, ...., for the sum of .... and .... dollars and .... cents; and I hereby authorize the clerk of said court to enter a judgment therein therefor against me, for said sum of money, together with costs of entering the same. This confession of judgment is for a debt hereafter to become due, and owing to the said plaintiff upon the following promissory note:

\$ .....

City of ....., 18..

[Time when due] after date, for value received, I promise to pay to .... [the plaintiff], the sum of .... and .... dollars and .... cents, together with interest on the same at the rate of .... per cent. per month.

[Signed]

.....

State of .... }  
 County of .... }

....., the defendant above-named, being duly sworn, deposes and says, that the facts stated in the above confession are true of his own knowledge.

Sworn to before me this .... day of ...., 18..

....., county clerk.

*Confession of Judgment for Money due.*

In the district court of the .... judicial district, .... and county of ...., State of California.

..... }  
 vs. }  
 ..... }

I, ...., defendant above-named, do hereby confess judgment in this case in favor of said plaintiff, ...., for the sum of .... and .... dollars and .... cents; and I hereby authorize the clerk of said court to enter a judgment therein therefor against me for said sum, together with costs of entering the same, with legal interest thereon from date.

This confession of judgment is for a debt now justly due and owing to the said plaintiff, arising from the following facts, to wit: Money had and received at said .... county, of the said plaintiff, for the use and benefit of the said defendant, at his special instance and request, at various times, between the .... of ...., 18., and the .... of ...., 18., amounting to said sum of .... and .... dollars and .... cents.

....., .....th, 18..

.....

State of California, }  
 and County of .... }

....., the defendant above-named, being duly sworn, deposes and

# CONFESSION OF JUDGMENT, FORMS OF—CONFIRMATION. 143

says, that the facts stated in the above confession are true, and further he saith not.

Sworn and subscribed to before me this .... day of ...., 18..

.....  
Deputy County Clerk.

## *Entry of Judgment on the Foregoing Confession.*

In the district court of the .... judicial district of the State of California, in and for the county of ....

..... }  
vs. Register No. .... th, A.D. 18..  
..... }

In this action the defendant, ...., having filed his confession of judgment, wherein he consents that judgment be entered in favor of the plaintiff, ...., for the sum of .... and .... dollars and .... hundredths (\$....), on application of ...., attorney for plaintiff, ordered that judgment be entered in accordance with said confession.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that ...., plaintiff, do have and recover of and from ...., defendant, the sum of .... and .... dollars (\$....), and .... cents, with interest thereon at the rate of .... per cent. per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this proceeding, amounting to the sum of .... dollars and .... cents (\$....).

Judgment entered ...., A.D. 18..

I hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action.

Attest my hand and seal of said .... district court, this .... day of ...., A.D. 18..

[L.S.]

..... Clerk,  
By ..... Deputy-Clerk.

## CONFIRMATION.

**Confirmation.**—When a party, acting for himself or by previously authorized agent, has attempted to enter into a contract, but has done so in an informal or invalid manner, he *confirms* the act, and thus renders it valid, in which case it will take effect as between the parties from the original making.

To make a **Binding** confirmation, the party must be apprized of his rights; and where there has been a fraud in the transaction, he must be aware of it, and intend to confirm his contract.

## CONFISCATE.

**Confiscate.**—To appropriate to the use of the State.

## CONFUSION OF GOODS.

**Confusion of Goods.**—Such a mixture of the goods of two or more persons that they cannot be distinguished.

When this takes place by the mutual consent of the owners, they have an interest in the mixture in proportion to their respective shares; but where it is caused by the willful act of one party, without the other's consent, the one causing the mixture must separate them at his own peril, and must bear the whole loss.

## CONSIDERATION.

**Consideration.**—The material cause which moves a contracting party to enter into a contract. The price, or matter of inducement to a contract, whether it be the compensation which is paid, or the inconvenience which is suffered by the party from whom it proceeds.

**Equitable Considerations,** are *moral* considerations.

**Executed Considerations,** are those done or received, before the obligor made the promise.

**Executory Considerations,** are those by which it is undertaken to do something at a future time.

**Good Considerations,** are those of blood, natural love or affection, and the like. Motives of natural duty, generosity, affection borne toward relations, etc., come under this class. Love or affection are sufficient considerations for the conveyance of land.

**Gratuitous Considerations,** are those which are not founded on such a deprivation or injury to the promisee as to make the consideration valid at law.

**Illegal Considerations,** are agreements to do things contrary to law.

**Impossible Considerations**, are those which cannot be performed.

**Moral Considerations**, are such as are sufficient to support an executed contract.

**Valuable Considerations**, are those which confer some benefit upon the party to whom the promise is made, or upon a third party at his instance or request.

**Consideration**, is the life-blood of a contract ; and a contract or promise, for which there is no consideration, is void. See CONTRACT.

### CONSIGNEE.

**Consignee**.—One to whom a consignment is made. When the goods consigned to him are his own and he has ordered them to be sent, they are at his risk the moment the consignment is made according to his direction. When the goods are not his own, he takes no risk, so long as the directions of the owner are obeyed.

### CONTEMPT.

**Contempt**.—Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process and for disturbing them in their proceedings.

### CONTRACTS.

**Contracts**.—A contract is an agreement between two or more persons, upon a sufficient consideration, to do or not to do a particular thing.

**To constitute a valid contract or agreement**, there must be:

1st. *The mutual assent* of two or more persons competent to contract; an intelligent meeting of the minds of the parties.

2d. *A good and valid consideration*: i. e., motive or induc-

ing cause to make the promise upon which the party is to be held or charged.

3d. *A subject matter* of the contract: *i. e.*, a thing to be done or omitted. And the thing agreed to be done must be one not forbidden by law; or if the agreement be to omit or forbear from doing a certain thing, it must be a thing not enjoined or made a duty by law.

**Different Kinds of.**—Contracts are divided into agreements by specialty, made by a written instrument under seal, and agreements without specialty, made either by a written instrument without a seal or verbally without any writing. In practical effect, the only difference between a written contract without a seal and a mere verbal agreement is, that the former is more easily proved. In certain cases agreements by specialty are of higher consideration in the law than agreements without specialty; and it is therefore advisable for laymen, who are not supposed to know in what cases a seal may be dispensed with, and for what purposes it may be desirable, to add a seal whenever they draw their own contracts or act without a legal advice.

**Execution of.**—In this state, a seal made of a foreign substance and affixed to the document, is not necessary, and a stamp or impression upon the paper is a good seal. A mere scrawl with a pen made upon the paper in the form of a seal, with the initials of the party written within the outline of the seal, has been held to be sufficient by the supreme court of California.

**What Constitutes.**—The essence of an agreement is the intelligent assent or union of the minds of the parties, and in its construction the actual intent of the parties is to be regarded. But, if the terms of the contract are clear, it will be binding even though contrary to the intention of the parties; for parol proof cannot be resorted to to modify the language of a written contract where it admits of a sensible construction. Only where there is a doubt or ambiguity in the terms of the written instrument, can parol proof or extrinsic circumstances be invoked to aid in its construction.

**Mistake in.**—If, however, a written instrument fails to

express the real contract designed to be made by the parties, in consequence of a mistake in the words or language used, courts having equity jurisdiction will generally reform the contract by making it conformable to the intention of the parties.

**Who may Contract.**—Incapacity to contract arises, among other causes, from infancy, from marriage (on the part of the woman) and from insanity. Infants are incapable of binding themselves by contract, except for necessities. The contract entered into by an infant may be repudiated at his option, either before his majority or within a reasonable time after it. He may also ratify and confirm it. This, however, must be done by a new promise, made after he has attained his majority. If the promise be a conditional one, the party seeking to enforce it must show the fulfillment of the condition. The contract of an infant may also be confirmed without an express new promise; and where he has neither disavowed nor affirmed it by words, a ratification is sometimes inferred from his acts. The question as to precisely what act or omissions amount to a confirmation, is one which would require too much space and is in its nature too nice to be capable of proper discussion in a work of this kind.

**Exceptions.**—The exception to the rule permitting an infant to repudiate contracts made by him, is the case where the promise or agreement is for necessities.

**What Invalidates.**—Fraud vitiates and annuls all contracts which are tainted by it, and the party guilty of the fraud cannot enforce the contract; nor can he, on the other hand, himself avoid it for his own benefit if it is sought to be enforced by the other party. Even one who executes a fraudulent bill of sale to a third person, with intent to defraud his creditors, cannot set the bill aside though the creditors may do so.

**Statutory Provisions, California, Nevada and Idaho.**—  
1st. Every contract for the leasing for a longer period than one year, or for the sale of any lands or any interest in lands, shall be void unless the contract, or some note or mem-

orandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

2d. *Every instrument* required to be subscribed by any person, may be subscribed by the agent of such party, lawfully authorized.

3d. *In the following cases* every agreement shall be void unless such agreement or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith : 1. *Every agreement* that by the terms is not to be performed within one year from the making thereof. 2. *Every special promise* to answer for the debt, default or miscarriage, of another. 3. *Every agreement*, promise or undertaking, made upon consideration of marriage, except mutual promises to marry.

4th. *Every contract* for the sale of any goods, chattels or things in action, for the price of two hundred dollars or over, shall be void, unless : 1. *A note or memorandum* of such contract be made in writing, and be subscribed by the parties to be charged therewith ; or, 2. *Unless the buyer* shall accept or receive part of such goods, or the evidences or some of them, of such things in action ; or, 3. *Unless the buyer* shall, at the time, pay some part of the purchase money.

5th. *Whenever goods* shall be sold at auction and the auctioneer shall, at the time of sale, enter in a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

6th. *Every sale* made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud as against the creditors



of the vendor or the creditors of the person making such assignment, or subsequent purchasers in good faith.

7th. *Every instrument* required by any of the foregoing provisions to be subscribed by any party, may be subscribed by the lawful agent of such party.

8th. *The term* "lands," as used in the foregoing statutory provisions, is to be construed as coextensive in meaning with lands, tenants and hereditaments; and the terms "estate and interest in lands," are to be construed to embrace every estate and interest, present and future, vested and contingent, in lands, as above defined.

**Of Certain Contracts in which Officers are Prohibited from being Interested.\***—1st. *It shall not be lawful* for any officer of state or member of legislature, alderman or member of the common council of any city in this state, or for the trustees of any city, town or village, or for the supervisor of any county, to become a contractor under any contract or order for supplies authorized by or for the state or any department thereof, or the legislature or either branch thereof, or by or for the aldermen or common council, board of trustees or board of county supervisors of which he is a member, or to be in any manner interested directly or indirectly as principal in any such contract.

2d. *It shall not* be lawful for any town, city, county or state officer, or member of the legislature, to be interested in any contract made by such officer or legislature of which he is a member or be a purchaser, or be interested in any purchase at any sale made by such officer, or a seller at any purchase made by such officer, in the discharge of his official duties.

3d. *All contracts* made in violation of the provisions of the first and second sections of this act may be declared void, at the instance of the city, town or village, or county interested, or of any other party interested in such contract, except the officers prohibited in said sections from making or being interested in such contract.

\* The law on this subject is substantially the same throughout the United States.

4th. *Any person* violating the provisions of this act, directly or indirectly, shall forfeit his office, and shall be punished by fine not less than five hundred nor more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or both.

**Punishment of Certain Fraudulent Contracts.**—1st. *If any debtor* shall fraudulently remove his property or effects out of this state, or shall fraudulently sell, convey, or assign or conceal, his property or effects, with intent to defraud, hinder or delay, his creditors of their just rights, claims or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment. See **CRIMES AND PUNISHMENTS**.

2d. *Any person* against whom an action is pending or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal, sell or dispose of, such property or effects, with intent to hinder, delay or defraud, the person bringing such action or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the above section. See **CRIMES AND PUNISHMENTS**.

#### **SPECIFIC CONTRACTS.**

**Payment in Civil Cases to follow Contract.**—In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had and damages for the detention.\* If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.\* In an action on a

\* In Nevada, the words, "or the value of the use thereof," are added.

contract or obligation in writing,\* for the direct payment of money, made payable in a specific kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation and be made payable in the kind of money or currency specified therein;† and in an action against any person for the recovery of money received by such person in a fiduciary capacity or to the use of another, judgment for the plaintiff, whether the same be by default or after verdict, may be made payable in the same kind of money or currency so received by such person.‡ And in all actions for the recovery of money, if the plaintiff shall allege in his complaint that the same was understood and agreed by the respective parties, to be paid in a specified kind of money or currency, and the same shall be admitted by the default of the defendant, or established by evidence to the satisfaction of the court, referee or jury, by whom the action shall be tried, the judgment for the plaintiff shall be made payable in the kind of money or currency so specified in the complaint. [Applicable to California alone.]

## FORMS.

*General Form of Contract.*

This contract, made the .... day of ...., one thousand eight hundred and ...., between ...., of the city of ...., in the county of .... and state of ...., of the first part, and .... of the village of ...., in said county and state, of the second part.

Witnesseth, that the said ...., in consideration of the covenants on the part of the party of the second part, hereinafter contained, doth covenant and agree to and with the said ....., that [here insert the agreement on the part of the party of first part].

And the said ...., in consideration of the covenants on the part of the party of the first part, doth covenant and agree to and with the said ...., that [here insert the agreement on the part of the party of the second part].

\* It need not be in writing in Nevada.

† The Nevada statute reads: "Or decision of the court or referee, may follow the contract or obligation, and be made payable in the kind of money or currency therein specified or thereby agreed."

‡ The Nevada statute reads: "Whether the same be by default or after decision of the court or referee, may be made payable in the same kind of money or currency so received by such person; and in all cases of damage the judgment shall be for gold coin."

In witness whereof, we have hereunto set our hand and seals the day and year first above written. .... [L.S.]

Sealed and delivered in presence of

..... [L.S.]

.....  
.....

[When required this clause may be inserted:]

And it is further agreed, between the parties hereto, that the party that shall fail to perform this agreement on his part, will pay to the other the full sum of .... dollars, as liquidated, fixed and settled, damages.

*Contract for the Purchase of a House and Lot.*

Memorandum of an agreement, made this .... day of ....., in the year ....., between ...., printer, of the city of ....., and ...., merchant, of the same city: Witnesseth, that the said .... agrees to sell, and the said .... agrees to purchase, for the price or consideration of .... dollars, the house and lot known and distinguished as number ...., in the .... street, in the said city of ....., The possession of the property is to be delivered on the .... day of ..... next, when ... per cent. of the purchase money is to be paid in cash, and a bond and mortgage on the premises, bearing ..... per cent. interest, payable in ..... years (such interest payable quarterly), is to be executed for the balance of the purchase money, at which time also a deed of conveyance in fee simple, containing the usual full covenants and warranty, is to be delivered, executed by the said .... and wife, and the title made satisfactory to the said .....: It being understood that this agreement shall be binding upon the heirs, executors, administrators and assigns, of the respective parties; and also, that said premises are now insured for .... dollars; and in case the said house should be burnt before the said first day of ..... next, that the said ..... shall hold the said insurance in trust for and will then transfer the same to the said ..... with the said deed.

In witness, etc., [as in general form].

*Contract for the Sale of Real Estate.*

Articles of agreement made and entered into, this ... day of ....., between ..... of ....., of the one part, and ...., of ....., of the other part, as follows: The said .... doth hereby agree with the said .... to sell to him the lot of ground [here describe it], for the sum of .....; and that he, the said ...., shall and will, on the .... day of ..... next, on receiving from the said .... the said sum, at his own cost and expense, execute a proper conveyance for the conveying and assuring the fee simple of the said premises to the said ....., free from all incumbrances, which conveyance shall contain a general warranty and the usual full covenants. And the said ..... agrees with the said ..... that he, the said ...., shall and will, on the said .... day of .... next, and on execution of such conveyance, pay unto the said ....., the sum of .... aforesaid. And it is further agreed, between the parties aforesaid, as follows: The said .... shall have and retain the possession of the property, and

receive and be entitled to the rents and profits thereof, until the said . . . day of . . . next, when and upon the delivery of the conveyance, the possession is to be delivered to the said . . . . . And it is understood that the stipulations aforesaid are to apply to and to bind the heirs, executors and administrators, of the respective parties. And in case of failure, the parties bind themselves each unto the other, in the sum of . . . . , which they hereby consent to fix and liquidate the amount of damages to be paid by the failing party for his non-performance.

In witness, etc., [as in general form].

*Contract for Building a House.*

Memorandum.—That on this . . . day of . . . , it is agreed between . . . of . . . , and . . . of . . . , in manner following, viz: The said . . . . . , for the considerations hereinafter mentioned, doth for himself, his heirs, executors and administrators, covenant with the said . . . . . , his executors, administrators and assigns, that he, the said . . . . . , or his assigns, shall and will, within the space of . . . next after the date hereof, in a good and workmanlike manner, and at his own proper charge and expense, at . . . , well and substantially erect, build and finish, one house, or messuage, according to the draft, scheme and explanation hereunto annexed, with such stone, brick, timber and other materials, as the said . . . . . or his assigns shall find or provide for the same. In consideration whereof, the said . . . . . doth for himself, his executors and administrators, covenant with the said . . . . . , his executors, administrators and assigns, well and truly to pay unto the said . . . . . his executors, administrators and assigns, the sum of . . . , of lawful money of . . . , in manner following: . . . part thereof at the beginning of said work; . . . another part thereof when the said work shall be half done, and the remaining . . . , in full for the said work, when the same shall be completely finished: And also that he, the said . . . . . , his executors, administrators or assigns, shall and will from time to time, as the same shall be required, at his and their own proper expense, find and provide stone, brick, timber and other materials, necessary for making, building and finishing, the said house. And for the performance of all and every the articles of agreement above-mentioned, the said . . . . . and . . . . . do hereby bind themselves, their executors, administrators and assigns, each to the other, in the penal sum of . . . , firmly by these presents.

In witness, etc., [as in general form].

*Contract respecting a Party Wall.*

This agreement, made this . . . day of . . . , in the year . . . , between . . . of the city of . . . , merchant, of the first part, and . . . of said city, merchant, of the second part: Witnesseth, whereas, the said . . . . . is the owner in fee of the lot and store known as number . . . , in . . . street, in the . . . ward of the city of . . . , and the said . . . . . , the owner in fee of the lot known as number . . . , in . . . street aforesaid, immediately adjoining to and on the southerly side of said lot and store number . . . , on which lot of the said . . . . . he is about to erect a brick store. And

whereas, it has been agreed by and between the said parties, that the said . . . . ., in erecting his store, shall make use of the gable end wall of the said store of the said . . . . ., immediately contiguous to and adjoining the said lot of the said . . . . ., as a party wall, upon the terms, conditions and considerations, hereinafter mentioned, the said gable end, wall of the said . . . . ., so to be used as a party wall, standing and being entirely on the said lot of the said . . . . . Now, therefore, this agreement witnesseth: That the said . . . . ., for and in consideration of the sum of . . . dollars to him in hand paid by the said . . . . ., at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth, for himself, his heirs, executors, administrators and assigns, covenant, grant, promise and agree, to and with the said . . . . ., his heirs, executors, administrators and assigns forever, that he, the said . . . . ., his heirs and assigns, shall and may, in erecting and building the said store upon the said lot of the said . . . . ., freely and lawfully, but in a workmanlike manner, and without any interruption, molestation or hindrance of or from the said . . . . ., his heirs or assigns, make use of the said gable end wall of the said store of the said . . . . ., immediately adjoining or contiguous to the said lot of the said . . . . ., or such parts and so much thereof as the said . . . . ., his heirs or assigns, may choose as a party wall. And further, that should the said wall, hereby made a party wall, be at any future time or times injured or destroyed, either by decay, lapse of time, fire, accident or other cause whatever, so as to require to be either repaired or rebuilt, in whole or in part, then, and in every such case, the said . . . . . and the said . . . . ., by these presents, for themselves respectively, and their respective heirs and assigns forever, mutually covenant and agree, to and with each other, and their respective heirs and assigns forever, that such reparation or rebuilding, as the case may be, shall be at the mutual, joint and equal, expense of them the said . . . . . and . . . . ., their respective heirs and assigns forever; as to so much and such parts of the said wall as shall be used by the said . . . . ., his heirs and assigns, in erecting and building the said store which he is now about erecting on his said lot, and as to all coping of the said gable end, whether such coping be used by the said . . . . ., his heirs or assigns, in erecting and building the said store or not, and as to the residue of the said wall not used by the said . . . . ., his heirs or assigns, in erecting and building the said store, such reparation or rebuilding of such residue of the said wall shall be at the sole and separate expense of the said . . . . ., his heirs or assigns forever; and that in every case of such reparation or rebuilding, should the same be necessary and proper, and either party, his heirs or assigns, request the other to unite in the same, and to contribute to the expense thereof, according to the true intent and meaning of this agreement, then the other party, his heirs or assigns forever, may cause such reparation or rebuilding to be made and done, and charge the other party, his heirs and assigns forever, with the proportion of expenses, costs and charges thereof, according to the true intent and meaning of this agreement; and that in every case of such reparation or rebuilding, as the case may be, such repairs shall restore the said wall to the state and condition in which it now is in all respects, as nearly as may be; and that in every case of rebuilding, such wall shall be

rebuilt upon the same spot on which it now stands, and be of the same size and the same materials, as far as they may go, and as to the deficiency, with others of the same quality and goodness, and in all respects shall be made of the same quality and goodness as the present wall. It being further in like manner mutually understood and agreed, by and between the said parties, that this agreement shall be perpetual, and run with the land, and be obligatory upon the heirs and assigns of the said parties, respectively, forever, and in all cases and on all occasions, shall be construed as a covenant running with the land; but that this agreement shall not have the effect or operation of conveying to the said . . . . ., his heirs or assigns, the fee simple of the one moiety or any part of the ground or land on which the said wall now stands, but only the right to the use and benefit of the said wall, as a party wall, forever.

In witness, etc., [as in general form].

*Contract for Making and Delivering Boots.*

This agreement, made this . . . . day of . . . ., in the year . . . ., by and between . . . . . of . . . ., and . . . . ., of . . . .:

Witnesseth, that the said . . . . ., in consideration of the covenants on the part of the party of the second part to be performed, doth covenant and agree, to and with the said . . . . ., that he will, within [here insert the time] from the date hereof, make and deliver to the said . . . . ., . . . . . pairs of boots, made from . . . . ., of the first quality, and of the following sizes [here insert sizes].

And the said . . . . . covenants to pay to the said . . . . ., . . . . dollars for each pair, upon the completion of the delivery of the said . . . . pairs, if the same are delivered within [insert time agreed upon] from the date hereof, as aforesaid.

In witness, etc., [as in general form].

*Contract for Sale of Wheat.*

Memorandum.—It is agreed by and between . . . . . of, etc.: That he, the said . . . . ., in consideration of . . . . . bushels of wheat, sold to him this day by the said . . . . ., and by him agreed to be delivered to the said . . . . ., free of all charges and expenses whatsoever, at, on or before, etc., next, shall and will pay or cause to be paid to the said . . . . . or his assigns, within three months after such delivery, the sum of, etc. And the said . . . . ., in consideration of the agreement aforesaid of the said . . . . ., doth promise and agree, on or before, etc., aforesaid, at his proper expenses, to send and deliver to the said . . . . ., or his assigns, the said . . . . . bushels of wheat, so sold him as aforesaid, and that he, the said . . . . ., shall and will warrant the same to be good, clean and merchantable, grain.

In witness, etc., [as in general form].

*Contract to Build a House according to a Plan Annexed.*

Be it remembered, that on this . . . . day of . . . ., A.D. 18.., it is agreed by and between . . . . . of . . . ., and . . . . . of . . . ., in manner and form following, viz:

The said .... for the considerations hereinafter mentioned, doth, for himself, his executors and administrators, promise and agree to and with the said ...., his executors, administrators and assigns, that he, the said ..... or his assigns, shall and will, within the space of ..... next after the date hereof, in good and workmanlike manner and according to the best of his art and skill, at ....., well and substantially erect, build, set up and finish, one house or messuage, according to the draft or scheme hereunto annexed, of the dimensions following, viz: etc., and to compose the same with such stone, brick, timber and other materials, as the said ..... or his assigns shall find and provide for the same. In consideration whereof, the said ..... doth for himself, his executors and administrators, promise and agree, to and with the said ....., his executors, administrators and assigns, well and truly to pay or cause to be paid, unto the said .... or his assigns, the sum of ....., in manner following: that is to say, the sum of ..... part thereof at the beginning of the said work; the sum of ..... more, another part thereof, when the same shall be completely finished: and also that the said ....., his executors, administrators or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile, timber and other materials, necessary for making and building the said house. And for the performance of all and every the articles of agreement above mentioned, the said ..... and ..... do hereby bind themselves, their executors, etc., each to the other, in the penal sum of ....., firmly by these presents.

In witness whereof, etc., [as in general form].

[Here annex plan.]

*Contract to Change a Mortgage Security.*

This agreement, made the .... day of ....., in the year ...., between the rector, wardens and vestrymen, of the .... church, in the city of ....., of the first part, and ...., of the said city, gentleman, of the second part: Witnesseth, that whereas, the said parties of the first part have sold and conveyed in fee unto the said party of the second part, the .... several lots of ground in said city known as numbers ....., for the price or consideration of \$....., part of which sum has been paid down on the delivery of the deeds therefor; and, whereas, in order to secure to the said parties of the first part the payment of the residue of said purchase money, to wit: the sum of \$....., in six equal payments of \$..... each, in ..... years, with interest thereon at the rate of .... per cent. per annum, the said party of the second part and his wife have executed and delivered to the said parties of the first part, ..... several mortgages on the said premises, as collateral security for the ..... several bonds of corresponding amounts, executed and delivered by the said party of the second part to the said parties of the first part; and, whereas, also, it may at some future period become expedient or advantageous for the said party of the second part to sell or otherwise dispose of the said premises so by him purchased as aforesaid, free and clear from the incumbrance of the said mortgages: Now, therefore, this agreement witnesseth, that the said parties of the first part, for and in consideration of the said premises, do, for themselves, their successors and assigns,



forever covenant, promise and agree, to and with the said party of the second part, his heirs, executors, administrators and assigns, that he, the said party of the second part, shall and may at all times hereafter have and retain the right of changing the security above mentioned, by substituting, instead of any, either or all of the said mortgages, the like security on other real estate or property of at least equal value with the said mortgaged premises. And this agreement further witnesseth, that whenever the said party of the second part, his heirs, executors, administrators or assigns, shall furnish the said parties of the first part, their successors or assigns, with such other satisfactory security as aforesaid, the said parties of the first part, their successors and assigns, shall and will, upon request to them made, forthwith execute and deliver to the said party of the second part, his heirs, executors, administrators and assigns, good and sufficient releases and discharges of the said mortgages, or any of them, and of the said premises therein mentioned.

In witness, etc., [as in general form].

*Contract for the Sale and Purchase of Land.*

Articles of agreement, made and concluded this ..... day of ....., A.D. 18.., at ....., in the state of ....., by and between ...., of said ....., and ....., of ....., in the state of .....

1st. The said ....., in consideration of the sum of ..... dollars to him paid by the said ..... (the receipt whereof is hereby acknowledged), and in further consideration of the promise of the said ..... hereinafter contained, doth hereby promise and agree, to and with the said ....., that he will, on or before the ..... day of ..... next, make and deliver to the said ..... a good and sufficient deed, with the usual covenants of warranty, release of dower, etc., of all that tract of land situate, lying and being, in the town of ....., in the county of ....., and state of ....., known as the ....., etc., [or, "bounded and described as follows" : .....].

2d. In consideration whereof, the said ..... doth hereby promise and agree, to and with the said ....., that he will, on such deed being tendered to him by the said ....., on or before the said ..... day of ..... next, pay to the said ..... the further sum of ..... dollars, in addition to the payment already made, being the balance of the purchase money hereby agreed upon for the said tract of land.

And to the true and faithful performance of all the agreements herein contained, on the part of the said ..... and ....., each of them binds himself, his heirs, executors and administrators, to the other and his heirs, executors and administrators.

In witness whereof, etc., [as in general form].

*Contract to be Signed by an Auctioneer, after a Sale of Land at Auction.*

I hereby acknowledge that ..... has been this day declared by me the highest bidder and purchaser of [describe the land], at the sum of .... dollars, [or, "at the sum of ..... dollars ..... cents per acre or foot"], and that he has paid into my hands the sum of ..... as a deposit, and in part payment of the purchase money; and I hereby agree that the vendor, ....., shall in all respects fulfill the conditions of sale hereto annexed.

Witness my hand, at ....., on the ..... day of ....., A.D. 18..

..... Auctioneer

*Contract to be Signed by the Purchaser of Lands at Auction.*

I hereby acknowledge that I have this day purchased at public auction all that [describe the land], for the sum of ..... dollars, [or, "for the price of ..... dollars ..... cents per acre or per foot"], and have paid into the hands of ..... the auctioneer, the sum of ....., as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of ..... unto ..... the vendor, at ....., on or before the ..... day of ....., and in all other respects, on my part, to fulfill the annexed conditions of sale.

Witness my hand, this .... day of ....., A.D. 18... ..

*Contract for the Sale and Delivery of Personal Property.*

This agreement, made this .... day of ....., one thousand eight hundred and ....., between ..... of the city of ....., of the first part, and ..... of the said city, of the second part: Witnesseth, that the said ..... in consideration of the covenants on the part of the said ..... doth covenant to and with the said ....., that he will deliver to the said ..... at his storehouse in ..... aforesaid, ..... bushels of wheat, of good merchantable quality, on or before the ..... day of ..... next. And the said ..... in consideration of the covenants on the part of the said ..... doth covenant and agree to and with the said ....., that he will pay to the said ..... at the rate of ....., for each bushel of wheat so delivered, immediately on the completion of the delivery thereof.

In witness, etc., [as in general form].

*Agreement to Sell Shares of Stock in an Incorporated Company.*

This agreement, made the ..... day of, etc., between ..... of, etc., and ..... of, etc.: Witnesseth, that the said ..... agrees to sell and convey to the said ....., on or before the .... day of ..... next, ..... shares of the capital stock of the ..... company, now owned and held by the said ....., and standing in his name on the books of the said company, and to made and execute unto the said ....., all assignments, transfers and conveyances, necessary to assure the same to him, his heirs and assigns.

In consideration whereof, the said ..... agrees to pay unto the said ..... for each and every share of such stock, the average cash market price of the same, for and during ..... days preceding the ..... day of ....., aforesaid, to be determined by the sales made in the city of .....

In witness, etc.

*Agreement or Subscription for Raising Money to Build a Church or other Work.*

We, the undersigned, do hereby severally promise and agree to pay to .... and ..... the trustees of the ..... church and ..... society, in the city of ....., the sums set opposite to our respective names, on demand [or as the terms of payment may be], for the purpose of building a church or place of worship for the said society in the city of ....., aforesaid; and we request the said trustees to contract for the building of such

church or place of worship, and to build the same, and to apply the sums of money hereto subscribed in payment therefor.

Witness our hands, this ..... day of ....., 18..

NAMES.	AMOUNT.
.....	\$.....
.....	.....
.....	.....

*Contract to Cultivate Land on Shares.*

This agreement, made the ..... day of, etc., between ..... of, etc., and ..... of, etc.: Witnesseth, that the said ..... agrees that he will break up, plough, properly fit and sow, with wheat, all that field belonging to the said ....., lying immediately .... of the town of ..... aforesaid, and containing two hundred acres or thereabouts, on or before the ..... day of ..... next; that when the said crop, to be sown as aforesaid, shall be in fit condition, he will cut, harvest and properly thresh, clean and sack, the same, and deliver one-half of the wheat, being the produce thereof, to the said ...., at ....., on or before the .... day of .... in the year 18..

It is understood between the parties, that one-half of the seed wheat is to be found by the said ....; that the said .... is to perform all the work and labor necessary in the premises or cause it to be done, and that the straw is to remain upon the ground and be the property of said .....

In witness, etc.

*Canceling Agreement on Contract.*

This agreement, made this .... day of ....., between .... of the first part, and ..... and ..... of the second part, witnesseth:

Whereas, on ..... A.D. 18...., both the said parties mutually agreed in writing, among other things, to this, namely: The party of the first part to devote his whole time and attention for ..... years, from said .... A.D. 18... to the care and management of certain real estate (in said agreement in writing more particularly described), and the buildings thereon, and the business there done and transacted, and the parties of the second part to employ the party of the first part as aforesaid and for the said term of ..... years.

And whereas, it is deemed desirable by all the parties hereto, that the said care, management and employment, of the party of the first part by the parties of the second part, should end and determine from this date.

Now, therefore, both parties hereto assent to the said ending and determination of the said care, management and employment.

And the party of the first part, does hereby discharge, release and acquit, the parties of the second part, of and from all obligation and liability to him, the party of the first part, by reason of the said employment or of any salary due or to become due, by reason hereof.

And the parties of the second part hereby release, acquit and discharge, the party of the first part, of and from any obligation or liability, by reason of his agreement for the care and management of the said real estate, property and business as aforesaid, or of the acts of any person hereafter employed

by the parties of the second part, in the care and management thereof, during the said unexpired term.

And they also agree that the party of the first part may have access to the books, papers and accounts, of the management of said real estate, property and business, kept during the management thereof by the party of the first part.

In witness whereof, etc., etc.

*Contract to Sell Stock in a Store.*

This agreement, made the .... day of ... , in the year 18... , between .... of, etc., and .... of, etc.: Witnesseth, that the said .... , for the consideration hereinafter specified, agrees to sell to the said .... , and the said .... agrees to buy of the said .... , all the stock of groceries, dry goods, hardware and goods, wares and merchandise, belonging to the said .... , and now being in the store occupied by him, in the town of .... , together with the furniture and fixtures thereunto appertaining, and also all the barley, hams, cheese, potatoes and produce, of every name and nature, bought or contracted for by the said .... , and intended for sale within the said store. The stock of goods, wares and merchandise, is to be inventoried to the said .... at the original cost, without including transportation expenses; and deduction is to be made for any depreciation in value, on account of damage, wear or tear: the furniture and fixtures are to be inventoried at their fair cash value; and if the above parties cannot agree as to such valuation, and as to such deduction as aforesaid, the same shall be determined according to the appraisal of .... , .... and .... , of .... aforesaid, or a majority of them, the barley, hams, cheese, potatoes and produce, are to be inventoried at their original cost. Said inventory is to be completed within .... days from the date hereof, and the property above specified delivered over to the said .... immediately thereupon.

In consideration of the premises, the said .... agrees to pay to the said .... , as and for the purchase money of the above-mentioned property, the sum of .... thousand dollars in cash.

And the said .... , further covenants and agrees, to and with the said .... , that he will not, at any time hereafter, engage, directly or indirectly, or concern himself, in carrying on or conducting the business of keeping a store in said town of ....

And it is expressly understood that the stipulations aforesaid are to apply to and to bind the heirs, executors and administrators, of the respective parties; and in case of failure, the parties bind themselves, each unto the other, in the sum of .... thousand dollars, as fixed and settled damages, to be paid by the failing party.

In witness, etc.

## CONVEYANCING.

**Conveyancing.**—Strictly speaking, every instrument under seal is a deed; but, in ordinary language, a conveyance of land is intended.

**A Deed in Fee Simple**, is a conveyance of the entire ownership of the land.

**A Warranty Deed**, is a conveyance in which the grantor agrees to be answerable for any defect whatever that there may be in the title.

**A Quitclaim Deed**, is one whereby the grantor conveys away his interest in the land, be it great or small.

**A Trust Deed**, is a conveyance by which the grantee takes the estate upon some trust or for some purpose, specified in the deed.

**These Instruments** should always be sealed, subscribed by the person whose estate is conveyed, and by that person acknowledged before the proper officer.

**If it be Impossible** to acknowledge the instrument at the time of execution, it is advisable always that it should be witnessed by two subscribing witnesses.

**The person** to whom the conveyance is made should immediately have the instrument recorded in the proper office. See RECORDER AND RECORDING.

**Who can Execute.**—Infants, idiots, persons of unsound mind and incompetent persons, can only make deeds that bind themselves through legally appointed guardians. A married woman cannot make a deed, except in certain cases. See INFANTS—MARRIED WOMEN—HUSBAND AND WIFE.

**Consideration for.**—A deed should be founded on a sufficient consideration and executed by persons able to contract and be contracted with; the subject matter must be set forth in sufficient words to describe the agreement and bind the parties; and it should be read by or to the grantor, previous to the execution, unless the reading is expressly waived. The consideration of a deed may be either good or valuable; it must not partake of any thing immoral, illegal or fraudulent. Every deed or contract is void, when made for any fraudulent purpose or in violation of law. See CONSIDERATION.

**Description.**—In drawing a deed, it is material to have a

proper description by metes and bounds, of the land conveyed. When the description in a deed is perfect, and the deed properly acknowledged, it is safe to say that the deed is perfect, no matter what form is used, so long as it is signed, sealed and properly acknowledged.

**Exchange or Partition.**—In drawing deeds for exchange of lands or amicable partition, the true and actual consideration or the value thereof, should be expressed, so that in the event of eviction or failure of title of either portion, the amount of the recovery by the losing party, if he is entitled to recover for his loss, may be fixed.

**Delivery of.**—A deed will not take effect, so as to vest the estate or interest intended to be conveyed, except from the time of its delivery. Almost any act of the party executing a deed, importing an intention to deliver it, will be sufficient; or it may be delivered as an *escrow*, on conditions, and will take effect, on the performance of such conditions, from the time of the delivery.

**Must be in Writing.**—No estate or interest in lands, other than lease, for a term not exceeding one year, nor any trust or power over or concerning lands or in any manner relating thereto, can be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring, the same, or by his lawful agent thereunto authorized by writing.

**Trusts and Wills.**—This cannot be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

**Words of Inheritance.**—The term "heirs" or other words of inheritance, are not necessary to create or convey an estate in fee simple; and every conveyance of real estate passes all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

**Grant, Bargain and Sell.**—The words “grant, bargain and sell,” unless restrained by express terms contained in the conveyance, are construed to be the following express covenants and none other, on the part of the grantor for himself, his heirs and assigns, and may be sued on as such: 1st. *That previous to the time of the execution of such conveyance, the grantor has not conveyed the same real estate or any right, title or interest, therein to any person other than the grantee.* 2d. *That such real estate is at the time of the execution of such conveyance, free from incumbrances done, made or suffered, by the grantor or any person claiming under him.*

**Possession.**—It is not necessary that the grantor should be in possession, but even if the land is held adversely he may sell and convey his interest therein.

**Conveyance in Fee Simple.**—If conveyance be made in fee simple absolute, and the grantor have not the legal estate, but should afterward acquire the same, the legal estate subsequently acquired passes immediately to the grantee, and the deed is as valid as if such legal estate had been in the grantor at the time of the conveyance.

**Contracts to Sell.**—Contracts for the sale of lands or any interest therein, or for leasing for over a year, are void, unless the contract or some note or memorandum thereof, expressing the consideration be in writing and subscribed by the party making the lease or sale, or by his lawful authorized agent.

**Deeds of Gift.**—Deeds of gift, where no valuable consideration passes, may be made; and when made understandingly and without fraud, will be held good. A gift of personal property may be made without deed, but to avoid doubt, a writing is generally passed. To make a deed of gift complete and valid, the property must be delivered. The gift is then executed and is binding.

**Gifts, Causa Mortis.**—Gifts, *causa mortis*, are gifts made in contemplation of death, which take effect if the death occurs, provided the property is not needed for the payment of the debts of the deceased.

**When Void.**—All gifts are void, which are made to hinder, delay and defraud, creditors, so far as such creditors are concerned, even where the gift is made as a settlement upon the wife or children of the donor.

**To Wife.**—In California, a deed of gift may be made by the husband to the wife directly, without the intervention of a third party, as trustee or otherwise. [Same in Nevada and Idaho.] See RECORDS AND RECORDING—ACKNOWLEDGMENTS—POWER OF ATTORNEY—HUSBAND AND WIFE—MARRIED WOMEN.

#### OREGON.

**Conveyance, how Made.**—The deed must be acknowledged, signed, sealed and delivered, the same as in California.

**Husband and Wife.**—A husband and wife may, by joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

**Effect of Quitclaim.**—A deed of quitclaim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

**Words of Inheritance and Construction of Words.**—[The same as in California.]

**Covenants not Implied.**—No covenants shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

**Mortgage not to imply Covenant to pay Money.**—No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no *express* covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.



## FORMS.

*Simple Form of Deed of Bargain and Sale.*

I, . . . . ., in consideration of the sum of . . . . dollars to me paid by . . . . ., do hereby grant, bargain and sell, to the said . . . . ., that lot of land [here insert location and description], with all and singular the rights and appurtenances thereof.

Witness my hand and seal this . . . . day of . . . ., 18..

..... [L.S.]

Sealed and delivered in presence of

.....

[Acknowledgment before the proper officer.]

*Deed of Bargain and Sale—the Form generally Used.*

This indenture, made the . . . . day of . . . ., in the year of our Lord one thousand eight hundred and . . . ., between . . . . ., of . . . ., part.. of the first part, and . . . . ., of . . . ., party of the second part: Witnesseth, that the said part.. of the first part, for and in consideration of the sum of . . . . dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel, of land, etc., [description], together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also the estate, right, title, interest, claim of homestead, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to, the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said part.. of the first part ha.. hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered, in the presence of .....

.....

*Form of Deed by Attorney-in-Fact.*

This indenture, made this . . . . day of . . . ., 18.., between . . . . ., of, etc., party of the first part, and . . . . ., of, etc., party of the second part: Witnesseth, [proceed as in foregoing forms to the conclusion, and sign it].

..... [L.S.]

By ....., his attorney-in-fact.

[Or, conclude thus :] In witness whereof, the said . . . . ., party of the first part, acting by . . . . ., his attorney-in-fact, hath hereto set his hand and seal, etc., etc.

*Quitclaim Deed.*

This indenture, made the .... day of ..., in the year of our Lord one thousand eight hundred and ..., between ...., of ..., of the first part, and ...., of the second part: Witnesseth, that the said party of the first part, for and in consideration of the sum of .... dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, receipt of which is acknowledged, has remised, released, quitclaimed, and by these presents does hereby remise; release and forever quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot [description], together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the same, with all and singular the appurtenances and improvements thereunto belonging, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, etc.

*Quitclaim, or Transfer of Interest in Property.*

Know all men, that I, ...., of etc., etc., do hereby grant, bargain and sell [or, "sell, assign, transfer and set over," or, "sell and convey," or, "sell and quitclaim," or, "remise, release and quitclaim"], unto ...., of, etc., etc., all my right, title and interest, in and to all that certain lot or parcel of land situate, lying and being, in, etc., [here insert description, and conclude:] To have and to hold the same, together with all and singular, etc., [as in foregoing forms].

*Deed of Gift to a Married Woman—Habendum Clause.*

To have and to hold the same to her the said ...., her heirs and assigns forever, to and for her sole and separate use, benefit and behoof, forever, as her separate property, and free from the management and control of her said husband, the rents, issues and profits, to be applied to her sole and separate use.

This conveyance being intended to operate by way of "gift," according to the meaning of that word as first used in the first section of an act entitled "An act to define the rights of husband and wife," passed on the seventeenth day of April, 1850, by the legislature of the state of California, and to be followed by the legal effects therein given to acquisitions by a married woman of property by "gift," to wit: That such acquisition shall be her separate property, and not the common property of the husband and wife; and it being also intended to secure to the said ...., the rents, issues and profits, of the said premises above described, to her sole and separate use, in accordance with the provisions of the said act as amended by the act of ....., 18..

In witness whereof, etc

*Concluding part of Trust Deed for Benefit of Wife.*

To have and to hold all and singular, the said herein-before granted and described premises unto the said ...., his heirs and assigns, upon the

trusts nevertheless, and to and for the uses, interests and purposes, herein-after limited, described and declared. That is to say, upon trust for .... wife of ....., as her sole, exclusive, separate and only, use and benefit, exclusive of any and all rights, title, interest, power and claim, of her said husband, ....., one of the parties of the first part to these presents therein, and for all liability for the payment of any of his debts, or on account of any of his acts, or on his account or by reason of their said marriage relation or otherwise.

And upon this further trust, that the said ....., his heirs and assigns, shall take possession of said premises and receive the issues, rents and profits, of the said premises, and apply the same to the use of the said ...., during the term of her natural life, and that her sole and separate receipt therefor shall be an acquittance, and after the death of the said ...., convey the same to the heirs of the said .... in fee. And upon this further trust, that he, the said ....., his executors and administrators, shall and may, in his and their discretion, sell, dispose of, vest and reinvest, said real estate and income thereof.

And that the said party of the second part and his heirs and assigns, shall and may at all times hereafter peacefully and quietly have, hold, use, occupy, possess and enjoy, the above granted, bargained and described, premises, and every part and parcel thereof, with the appurtenances, and receive and take the rents, issues and profits, thereof, to and for his and their own proper use and benefit, without any loss, suit, hindrance or molestation, eviction or denial of, from or by the said parties of the first part, their heirs and assigns, or of, from or by, any other person whomsoever, lawfully claiming or to claim any estate, right, title or interest, of, in or to, the same, by, through or under, them or either of them.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, etc.

#### *Corporation Deed.*

This indenture, made the .... day of ...., in the year one thousand eight hundred and ....., between the ..... company, of the first part, and ....., of, etc., [as in foregoing forms and conclude:] To have and to hold the above granted, bargained and described, premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use and benefit forever.

In witness whereof, the said party of the first part hath hereunto caused their corporate seal to be affixed and these presents to be subscribed by their president [or "secretary," or, as the case may be].

..... [L.S.]

President of the Company.

Sealed and delivered in presence of

.....

#### *Deed of Exchange of Lands.*

This indenture, made, etc., between ...., of, etc., of the first part, and ....., of, etc., of the second part: Witnesseth, that the said ....

.... in consideration of the conveyance, hereinafter made to him by the said ..... of lands of the value of at least ..... thousand dollars, and of the sum of ..... dollars in cash, money in hand paid to said ..... by said ..... hath given and granted, and by these presents doth give and grant, unto the said ..... his heirs and assigns, all [description], with all and every of the appurtenances: said lands being of the value of at least one thousand ..... dollars, in exchange of and for the lands hereinafter mentioned, of the said ..... and for the additional consideration of money as above expressed: To have and to hold the said premises, with the appurtenances, to the said ..... his heirs and assigns forever. And the said ..... doth covenant, etc. [Insert such covenants as may be necessary.] And the said ..... hath likewise, on his part, given and granted, and by these presents doth give and grant, unto the said ..... his heirs and assigns, all [description], with all and every of the appurtenances: said lands being of the value of at least ..... thousand dollars, in exchange of and for the premises first above described: To have and to hold the above granted premises, with the appurtenances, to the said ..... his heirs and assigns, forever, as aforesaid. And the said ..... doth covenant, etc., [as above].

In witness whereof, the said parties have hereunto set their hands and seals, etc.

#### *Deed Without Covenants.*

This indenture, made the .... day of ....., in the year of our Lord, one thousand ....., between ..... of, etc., of the first part, and ..... of, etc., of the second part: Witnesseth, that the said party of the first part, for and in consideration of the sum of ..... to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell, unto the said party of the second part, and to his heirs and assigns forever, all, etc. [Here describe the property.] Together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, claim or demand, whatsoever of him, the said party of the first part, either in law or equity, of, in and to, the above bargained premises and every part and parcel thereof: to have and to hold to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof, of the said party of the second part, his heirs and assigns forever.

In witness whereof, ..... have hereunto set ..... hand and seal, the day and year first above written.

Sealed and delivered in presence of

..... [L.S.]

.....

#### *Quitclaim Deed of Husband and Wife.*

Know all men by these presents, that we, ..... of, etc., and ....., the wife of the said ..... in consideration of the sum of ....., to us in hand paid, by ..... of, etc., the receipt whereof we do hereby acknowledge, have bargained, sold and quitclaimed, and by these presents do bargain, sell and quitclaim, unto the said ....., and to his heirs and assigns for-

ever, all our and each of our right, title, interest, estate, claim and demand, both at law and in equity, and as well in possession as in expectancy of, in and to, all that certain farm or piece of land, situate, etc., [describing it], with all and singular the hereditaments and appurtenances thereunto belonging.

In witness, etc.

*Deed with Covenants against the Grantor only.*

This indenture, made this, etc., between ..... of ....., of the one part and ..... of ....., of the other part: Witnesseth, that the said ..... in consideration of ....., to him in hand paid by the said ..... the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto the said ....., and his heirs and assigns forever, all .....; together with all and singular the hereditaments and appurtenances whatsoever to the same belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof, and every part and parcel thereof; and also all the estate, right, title, interest, trust, property, claim and demand, whatsoever, both at law and in equity, of the said ....., in, to or out of, the said lands, tenements, hereditaments and premises: To have and to hold the said lands, tenements and hereditaments, and all and singular other the premises hereinbefore mentioned, with their appurtenances, unto the said ....., his heirs and assigns, and to his and their only proper use and behoof.

And the said ..... doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said ..... his heirs, executors, administrators and assigns, in manner and form following, that is to say: that the said ....., his heirs and assigns, shall and may peaceably and quietly have, hold and enjoy, the said lands, tenements, hereditaments and premises, and every part and parcel thereof, without the let, suit, trouble, eviction or disturbance, of the said ....., his heirs or assigns, or of or by any other person or persons lawfully claiming or to claim from, by or under, or in trust for him, them or any of them.

And that the said lands, tenements, hereditaments and premises, and every part and parcel thereof, now are and from henceforth shall continue, remain and be, unto the said ....., his heirs and assigns, free and clear, and freely and clearly acquitted, exonerated and discharged of, from and against, all former and other gifts, grants, bargains, sales, mortgages, estates, titles, troubles, charges and incumbrances, whatsoever had, made, done, committed, occasioned or suffered, by the said ....., or by any person lawfully claiming or to claim by, from or under him, or by his, their or any of their, act, means, assent or procurement.

And the said ... and his heirs, all and singular, the aforesaid lands, tenements, hereditaments and premises, and every part and parcel thereof, unto the said ....., his heirs and assigns, against him, the said ..... his heirs and assigns, shall and will warrant and forever defend by these presents.

In witness, etc.

*Deed with Full Covenants.*

[Oregon and California.]

This indenture, made the ..... day of ....., in the year ....., between ..... of ....., of the first part, and ..... of ....., of the second part: Witnesseth, that the said part. . of the first part, for and in consideration of the sum of ....., current money of the United States, to ..... in hand paid by the said parties of the second part, at and before the ensembling and delivery of these presents, the receipt whereof they do hereby acknowledge; and thereof and therefrom, and of and from every part and parcel thereof, do acquit, release, exonerate and discharge, the said party of the second part, his heirs, executors, administrators and assigns, and every of them, by these presents have granted, bargained, sold, aliened, remised, released and confirmed, and by these presents, do fully, freely and absolutely, grant, bargain, sell, alien, remise, release and confirm, unto the said party of the second part, and his heirs and assigns forever, all that messuage or dwelling-house, and lot of land thereto belonging, situate, lying and being, etc., together with all and singular the hereditaments and appurtenances whatsoever, to the said messuage, lot of ground and premises, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim and demand, whatsoever of the said parties of the first part, and each of them, of, in and to, the same, or any part or parcel thereof: To have and to hold the said messuage and lot of ground and premises, with their and every of their rights, members and appurtenances, unto the said party of the second part, his heirs and assigns forever, to the only proper use, benefit and behoof, of the said party of the second part, his heirs and assigns forever.

And the said .... and his heirs, all and singular, the aforesaid messuage, lot of ground and premises, with their and every of their rights, members and appurtenances, hereby granted and released, and every part and parcel thereof, unto the said party of the second part, his heirs and assigns, and against him, the said ....., his heirs and assigns, and against all and every other person or persons whomsoever, shall and will warrant and forever defend by these presents.

And the said ....., for himself, his heirs, executors and administrators, and each and every of them, doth hereby promise, covenant, grant and agree, to and with the said party of the second part, his heirs and assigns, in manner and form following: That is to say, that he, the said ....., is, at the time of the ensembling and delivery of these presents, the true, lawful and rightful, owner and proprietor of the said messuage and lot of ground and premises, with their and every of their rights, members and appurtenances, and every part and parcel thereof, of a good, pure, perfect and indefeasible, estate of inheritance, in fee simple, without any manner of condition or limitation, of any use or uses, or any other matter, cause or thing, whatsoever, to determine, alter, change or defeat, the same.

And that he, the said ....., has, in himself, good right, full power and lawful absolute authority, to grant, bargain, sell, remise, release and confirm,

the said messuage and lot of land and premises, with their and every of their appurtenances, unto the said party of the second part, his heirs and assigns, in manner and form aforesaid.

And also, that he, the said party of the second part, his heirs and assigns, and every of them, shall and may, from time to time and at all times forever hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy, all and singular, the premises herein-before mentioned or intended to be hereby conveyed, and every part and parcel thereof, with their and every of their appurtenances, without any let, suit, trouble, denial, eviction, ejection or interruption, whatsoever, of or by him, the said . . . . ., his heirs or assigns, or at or by any other person or persons whatsoever, having or lawfully claiming any estate, right, title or interest, of, in or to, the same, or any part thereof, and that free and clear, and freely and clearly acquitted, exonerated and discharged of and from all and all manner of former and other bargains, sales, gifts, grants, feoffments, devices, dowers, rights, and titles of dowers, uses, issues, fines, annuities, debts, duties, judgments, executions, recognizances and all other estates, rights, titles, troubles, charges and incumbrances, whatsoever had, made, committed, done or suffered, in anywise whatsoever, by him, the said . . . . ., or by any other person or persons whatsoever having or lawfully claiming any estate, right, title or interest, of, in or to, the same, or any part or parcel thereof.

And, moreover, that he, the said . . . . ., and his heirs, and all and every other person or persons, having or lawfully claiming any estate, right, title or interest, of, in or to, the said messuage, lot of ground and premises, or any part or parcel thereof, by, from or under, him, shall and will, from time to time and at all times hereafter, upon the reasonable request and at the proper costs, any charges of the said party of the second part, his heirs or assigns, make, do, acknowledge, levy, suffer and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed, all and every such further and other act and acts, thing and things, device and devices, conveyances and assurances, in the law whatsoever for the further, better and more effectual, conveying, settling and assuring, of all and singular the premises hereinbefore mentioned or intended to be herein conveyed, with their and every of their rights, members and appurtenances, to the only proper use and behoof of the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised or required.

In witness, etc.

*Deed of Warranty, with Release of Dower.*

[For Oregon.]

Know all men by these presents, that I, . . . . ., of . . . . ., in the county of . . . . ., farmer, in consideration of . . . . . dollars to me paid by . . . . ., of . . . . ., in the county of . . . . ., merchant (the receipt whereof is hereby acknowledged), do hereby give, grant, bargain, sell and convey, unto the said . . . . ., his heirs and assigns, a certain tract or parcel of land, situate in . . . . ., aforesaid, bounded and described as follows, viz: [describe the land], with all the privileges and appurtenances thereto belonging.

To have and to hold the aforegranted premises to the said ..... and his heirs and assigns, in fee simple, forever; and I, the said ....., for myself and my heirs, executors and administrators, do covenant with the said ..... and his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said ....., as aforesaid; and that I will, and my heirs, executors and administrators, shall warrant and defend the same to the said ..... and his heirs and assigns forever, against the lawful claims and demands of all persons. And for the consideration aforesaid and for divers other good and valuable considerations, I, ...., wife of said ....., do hereby release and quitclaim unto the said ....., his heirs and assigns, all my right, claim or possibility of dower, in or out of the afore-described premises.

In witness, etc.

*Deed of Quitclaim, with Special Warranty.*

Know all men by these presents, that I, ....., of ..... in the county of ....., farmer, in consideration of ..... dollars to me paid by ....., of ....., in the county of ....., baker [the receipt whereof is hereby acknowledged], do hereby convey, revise, release and forever quitclaim, unto the said ....., his heirs and assigns, all that tract or parcel of land, situate in...aforesaid, bounded and described as follows, viz: [here describe the land], with all the privileges and appurtenances thereto belonging.

To have and to hold the above-released premises to the said ....., his heirs and assigns, to his and their use and behoof forever. And I, the said ....., for myself, my heirs, executors and administrators, do covenant with the said ....., his heirs and assigns, that the premises are free from all incumbrances made or suffered by me; and that I will and my heirs, executors and administrators, shall warrant and defend the same to the said ....., his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under, me, but against none other.

In witness, etc.

*Deed to ....., to hold until .... shall become of Age and then to .... in Fee; or if .... shall die before the age of Twenty-one Years, then to .... in Fee.*

Know all men by these presents, that I, ..... of, etc., in consideration of ..... dollars, to me paid by ....., of ....., etc., and other good and valuable considerations, do hereby give, grant, bargain, sell and convey, unto the said ..... and his son ....., the following-described tract or parcel of land, situate in ..... aforesaid, bounded and described as follows: [here describe the land], with all the privileges and appurtenances thereto belonging.

To have and to hold the above-granted premises, unto the said ....., for and during the minority of his son ....., and until the said ..... shall arrive at the age of twenty-one years, and unto the said ....., and his heirs, to his and their own use, in case he shall arrive at the full age of twenty-one years; but in case the said ..... shall de cease before he



arrives at the age of twenty-one years, then unto the said . . . . . and his heirs and assigns, to their own use forever.

In witness whereof.

*Short Form of a Deed with Full Covenants.*

Know all men by these presents, that we, . . . . ., and . . . his wife, of the town of . . . . ., in the county of . . . . ., for and in consideration of the sum of . . . dollars, to us in hand now and here paid, have granted, bargained, sold, and by these presents do grant, bargain, sell and convey, unto . . . . ., of the same place, all that certain parcel of land, situate in the said town of . . . . ., and described as follows : [or, "which, in a deed of conveyance, made by . . . . . to the said . . . . ., dated the . . . . . day of . . . . . in the year . . . . ., was described as follows :"] [here insert boundaries] ; with all the appurtenances and all the right, title, interest, claim and demand, of us or either of us, in the premises : to have and to hold the same, with the appurtenances, unto the said . . . . . and his heirs, in fee simple, forever. And I, the said . . . . ., for myself and my heirs, do hereby covenant and agree, to and with the said . . . . . and his heirs and assigns, that I am now the owner of the said premises, and am seized of a good and indefeasible estate of inheritance therein, and that I have full right and power to sell and convey the same in fee simple absolute ; that the said premises are clear of all incumbrances ; that the said . . . . . his heirs and assigns, may forever hereafter have, hold and possess, and enjoy the same, without any suit, molestation or interruption, by any person whatever, lawfully claiming any right therein ; and that I, the said . . . . ., and all persons hereafter claiming under me, will at any time hereafter, at the request and expense of the said . . . . ., his heirs or assigns, make all such further assurances for the more effectual conveying of the said premises with the appurtenances, as may be reasonably required by him or them ; and that I, the said . . . . . and my heirs, will warrant and defend the said premises with the appurtenances unto the said . . . . ., and his heirs and assigns forever.

In testimony, etc.

*Deed by Executors under an Authority in a Will.*

To all persons to whom these presents shall come, we, . . . . . and . . . . ., both of, etc., executors of the last will and testament of . . . . ., late of, etc., deceased, testate, send greeting :

Whereas, the said . . . . ., in order to enable his said executors fully to carry into effect his intentions, did, in and by his last will and testament, authorize and empower his said executors, in any manner which they should deem proper, to make sale of and execute and deliver deeds to convey, all his the said testator's real estate :

Now, therefore, know ye, that by virtue and authority to us given by said . . . . ., in his last will and testament, we, the said . . . . . and . . . . ., executors as aforesaid, in consideration of the sum of . . . . ., to us paid by . . . . ., of, etc., (the receipt whereof is hereby acknowledged), have given, granted, bargained, sold and conveyed, and by these presents we do give, grant, bargain, sell and convey, unto the said . . . . ., his heirs and

assigns, the following-described parcels of real estate, which was the property of the said . . . . ., situate in . . . . ., and bounded and described as follows, to wit, etc.

To have and to hold the afore-granted premises to him, the said . . . . ., his heirs and assigns, to his and their use and behoof forever. And we, the said . . . . . and . . . . ., do covenant with the said . . . . ., his heirs and assigns, that we are lawfully the executors of the last will and testament of the said . . . . .; and that we have not made or suffered any incumbrance on the hereby granted premises since we were appointed executors of the said . . . . .; and that we have in all respects acted, in making this conveyance, in pursuance of the authority granted to us in and by the said last will and testament of the said . . . . .

In testimony, etc.

#### *Deed of a Right of Way and Drain.*

Whereas, . . . . . and . . . . ., both of . . . . ., in the county of . . . . ., housewrights, are the joint owners of a lot of land, with a dwelling-house and appurtenances fronting . . . . ., on . . . . . street, in said . . . . ., and . . . . ., of said . . . . ., mason, is the owner of a lot of land and house also fronting . . . . . on said street, and adjoining the house of the said . . . . . and . . . . ., on the . . . . . side thereof; and an agreement has been made between the said . . . . . and . . . . ., and the said . . . . ., by which the said . . . . . and . . . . ., have agreed to grant to the said . . . . ., his heirs and assigns, being the owner of said land and house, a right of way in and over a part of their premises, and a right of drain through and under the same:

Now, therefore, know all men by these presents, that we, the said . . . . . and . . . . ., in pursuance of the said agreement, and in consideration of the sum of . . . . . dollars, to us paid by the said . . . . ., do hereby give, grant, sell and convey, unto the said . . . . ., and his heirs and assigns, a right of way in and over a certain strip of land on the . . . . . side of our, the said . . . . . and . . . . . 's land, and for him the said . . . . ., his tenants, servants, heirs and assigns, at all times to pass and repass from . . . . . street aforesaid, to the rear of said . . . . . 's land, and from the rear of said house to the said street, the said strip of land being of the width of . . . . . feet, and of the length of . . . . . feet, and running from said . . . . . street to the rear of said land of . . . . . and . . . . .; and the said way is and shall be forever of said dimensions, and of the height of . . . . . feet; and also, for the consideration above-mentioned, the said . . . . . and . . . . . do hereby give, grant, sell and convey, to the said . . . . ., his heirs and assigns, the right to enter a drain from his said land into the drain now running under the said strip of land, to be used as a passage-way as aforesaid, and the same to use as a sewer or drain from said . . . . . 's land to the common sewer in . . . . . street; the said . . . . ., and his heirs and assigns at all times paying their just proportion of the expenses of cleaning and repairing the same.

To have and to hold the said easements and privileges to him, the said . . . . ., his heirs and assigns forever, as appurtenances to his and their said land and house above described.

[Add covenants of seizin, right to sell and warranty.]

*Deed of a Water-course.*

This indenture, made, etc. [Here insert the parties.] Whereas, the said . . . . . and . . . . ., at the time of the sealing and delivery of these presents, are respectively seized in fee of and in two contiguous tracts, pieces, or parcels of land, with the appurtenances, in the township of . . . ., aforesaid; and, whereas, there is a dam and race, or water-course, erected and made in and upon a certain run or stream of water (called . . . .), within the land of the said . . . . ., for watering, overflowing and improving, meadow ground thereon: Now, this indenture witnesseth, that said . . . . ., for divers good causes and considerations, and more especially for and in consideration of the sum of one dollar to him paid by the said . . . . ., at or before the sealing and delivery hereof (the receipt whereof he does hereby acknowledge), has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm, unto the said . . . . ., and to his heirs and assigns, all the water of the said run or stream of water, to be led and conveyed from the said dam, along the race or water-course aforesaid, into the said land of the said . . . . ., for the space of four days in every week to wit: from . . . . evening at sunset, to . . . . evening at sunset, from the . . . . day of . . . . to the . . . . day of . . . ., yearly and every year, for the watering, overflowing and improving, the meadow ground on the land of the said . . . . ., together with free ingress, egress and regress, to and for the said . . . . ., his heirs and assigns, and his and their workmen, with horses, carts and carriages, at all convenient times and seasons, through the land of the said . . . . ., his heirs and assigns, in and along the banks of the said dam and race, or water-course, for the amending, cleaning and repairing, the same, with liberty and privilege, for that purpose, to dig and take stones and earth from the adjacent land of the said . . . . ., when and as often as need be or occasion require. To have and to hold, all and singular, the premises and privileges hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said . . . . ., to the only proper use and behoof of the said . . . . ., his heirs and assigns forever, he or they paying one moiety or half part of the expenses, which from time to time may accrue, in supporting, cleansing and repairing, the dam and water-course aforesaid.

In witness, etc.

*Deed of Release.*

This indenture, made . . . ., between . . . . . of . . . ., of the one part, and . . . . ., of . . . ., of the other part: Witnesseth, that the said . . . . ., for and in consideration of the sum of . . . ., to him, the said . . . . . in hand, well and truly paid, at or before the ensealing and delivery of these presents, the receipt whereof he, the said . . . . ., doth hereby acknowledge, and thereof and from every part and parcel thereof doth release, and forever discharge the said . . . . ., his heirs, executors and administrators, and every of them by these presents, hath granted, bargained, sold, aliened, released and confirmed, and by these presents do grant, bargain, sell, alien, release and confirm, unto the said . . . . ., (in his actual possession now being, by virtue of a bargain and sale to him thereof made, for one whole

year, by indenture, bearing date the day next before the day of the date of these presents, and by force of the statute made for the transferring of uses into possession): and to his heirs and assigns, all that messuage, etc., together with all easements, profits, commodities, advantages, emoluments and hereditaments, whatsoever to the same belonging, or in any wise appertaining, or which, to and with the same now are or at any times heretofore have been held, used, occupied, accepted, reputed, taken or known, as part, parcel or member, thereof, or of any part thereof; and the reversion and reversions, remainder and remainders, rents, issues and profits, of all and singular the said premises, and every part and parcel thereof, with the appurtenances, and also all the estate, right, title, interest, property, claim and demand, whatsoever, in law or equity, of him, the said . . . . ., of, in and to, all and singular, the said premises above-mentioned, and of, in and to, every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said messuage or tenements, lands, hereditaments and premises, above, in and by these presents, released and confirmed, and every part and parcel thereof, with the appurtenances, unto the said . . . . ., his heirs and assigns forever, to the only proper use and behoof of the said . . . . ., his heirs and assigns, forever; [or, "to and for such intents and purposes as are hereinafter mentioned, expressed and declared, of and concerning the same, that is to say:" expressing the uses at large].

[For covenants, see deeds with full covenants.]

*Deed of Confirmation from a Person on attaining the Age of Twenty-one Years, who was made a Party to a Conveyance before he was of Age—To be indorsed on Conveyance.*

Memorandum.—That the within-named . . . . . was not of age, at the time of making the within-written indenture, but hath now attained his full age of twenty-one years; and did on this . . . . day of . . . ., seal and deliver this present indenture, in the presence of

. . . . .

#### DEED.

This indenture, made, etc., between . . . . ., of, etc., a son, and one of the heirs of . . . . ., deceased, of the one part, and . . . . ., of, etc. of the other part: Whereas, by a certain deed of bargain and sale, bearing date on or about, etc., and made between . . . . . and the said . . . . ., of one part, and the said . . . . ., of the other part, for the consideration of . . . . the several messuages or tenements therein mentioned and hereinafter intended to be released and confirmed, are thereby granted and affirmed, or intended so to be, unto and to the use of the said . . . . ., his heirs and assigns forever, as by the said indenture of bargain and sale, relation being thereunto had, may more fully appear: And, whereas, the said . . . . ., at the time of the date and making the said in part recited indenture of bargain and sale, was not of the age of twenty-one years, but hath since attained to such his age of twenty-one years, and hath this day . . . . ., before the execution of these presents, duly sealed and delivered the said in part recited indenture of bargain and sale: Now this indenture witnesseth, that as well in performance of a covenant for further assurance in the said indenture of bar-

gain and sale contained, as also for and in consideration of the sum of ..... dollars, to him, the said ..... , in hand paid by the said ..... , at and before the ensembling, etc., being his full part and share of and in the before-mentioned sum of ..... dollars, agreed to be paid for the purchase of the said messuage, tenements and hereditaments, the receipt whereof he, the said ..... , doth hereby acknowledge, he, the said ..... , hath remised, released, aliened and quitclaimed, and by these presents doth absolutely remise, release, alien, and forever quitclaim and confirm, unto the said ..... , in his actual possession now being by virtue of the before-mentioned indenture of bargain and sale, and to his heirs and assigns, all, etc., to have and to hold unto and to the use of the said ..... , his heirs and assigns, forever. [Insert a covenant that he has done no act to incumber, except, etc., and for further assurance, etc.]

In witness, etc.

#### *Deed of Gift.*

This indenture, made, etc., between ..... , of ..... , of the one part, and ..... , son of the said ..... , of the other part : Witnesseth, that the said ..... , as well for and in consideration of the natural love and affection which he, the said ..... , hath and beareth unto the said ..... , as also for the better maintenance, support and livelihood, of him, the said ..... , hath given, granted, aliened, enfeoffed and confirmed, and by these presents doth give, grant, alien, enfeoff and confirm, unto the said ..... , his heirs and assigns, all that messuage, etc., together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof, and all the estate, right, title, interest, property, claim and demand, whatsoever of him, the said ..... , of, in and to, the said messuage, tenements and premises, and of, in and to, every part and parcel thereof, with their and every of their appurtenances : To have and to hold the said messuage, tenements, hereditaments, and all and singular the premises hereby granted and confirmed, or mentioned or intended so to be, with their and every of their appurtenances, unto the said ..... , his heirs and assigns, to the only proper use and behoof of him, the said ..... , his heirs and assigns, forever. And the said ..... , for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said ..... , his heirs and assigns, by these presents, that he, the said ..... , his heirs and assigns, shall and lawfully may, from time to time and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said messuage, farm, lands, tenements, hereditaments and premises, hereby granted and confirmed or mentioned, or intended to be hereby granted and confirmed, with their and every of their appurtenances free, clear and fully discharged, or well and sufficiently saved, kept harmless and indemnified, of, from and against, all former and other gifts, grants, bargains, sales, jointures, feoffments, dowers and estates, and of, from and against all former and other titles, troubles, charges and incumbrances, whatsoever, had, done or suffered, or to be had, made, done or suffered, by him, the said ..... , his heirs or assigns,

or any other person or persons, lawfully claiming or to claim, by, from or under, him, them or any of them.

In witness, etc.

*Deed of Partition of Lands Descended.*

This indenture, made the ..... day of ....., in the year ....., between ..... of, etc., and ..... his wife, one of the daughters and heirs of ..... late of, etc., of the one part, and ..... widow, sister of the said ..... another of the daughters and heirs of the said ..... of the other part : Witnesseth, that it is covenanted, granted and agreed, between the parties, for the partition to be had and made of the inheritance of the lands, tenements and hereditaments, which descended to the said ..... in coparcenary, by and after the death of their father, the said ..... in manner and form following : First, it is covenanted and granted between the said parties, and the said ..... doth grant, by these presents, that the said ..... and ..... his wife, in the right of the said ..... shall have for their part and purparty of the aforesaid lands, tenements and hereditaments, all, etc., [describing the share], which the said ..... and ..... his wife, as in the right of the said ..... shall have and enjoy, to her and her heirs, in full recompense and allowance of and for her part and purparty, that to her belongeth or ought to belong, of all the said lands, tenements and hereditaments, by and after the decease of the said ..... as one of his daughters and heirs ; second, it is in like manner covenanted and granted between the said parties, and the said ..... and ..... his wife, doth grant by these presents, that the said .... shall have for her part and purparty of the aforesaid lands, tenements and hereditaments, all, etc., [describing the share], which the said .... shall have and enjoy to her and her heirs, etc., [as before].

In witness, etc.

*Deed of Partition between Tenants in Common.*

This indenture, made, etc., between ..... of, etc., of the one part, and ..... of, etc., of the other part : Witnesseth, that whereas, they, the said ..... and ..... have and hold in common and as tenants in common, in equal parts, all, etc. It is covenanted, granted, concluded and agreed, by and between the said parties and each of them covenants, grants, concludes and agrees, for himself, his heirs and assigns, that a partition of the said lands and other premises, in manner and form following, that is to say :

First : The said ..... shall, from henceforth, have, hold, possess and enjoy, in severalty by himself, and to him and his heirs and assigns, for his half part, purparty, share and proportion, of the said lands and premises, all, etc., together with all and singular the hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And the said ..... doth accordingly give, grant, release and confirm, unto the said ..... his heirs and assigns, the lands and premises so as aforesaid set apart to the said ..... as and for his part and share aforesaid ; and, moreover, the said ..... for himself, his heirs, executors and

administrators, doth hereby covenant to and with the said . . . . ., his heirs and assigns, that he, the said . . . . ., his heirs and assigns, shall and may, from time to time and at all times hereafter, well and peaceably have, hold, possess and enjoy, the lands and premises hereinbefore assigned and conveyed to the said . . . . ., for his part and share, as aforesaid, free, clear and discharged, of and from all estates, rights, titles, interests, charges and incumbrances, whatsoever had, made, caused or suffered to be made, caused or suffered, of or by the said . . . . ., or any person claiming or to claim by, from or under, him, and without any let, trouble, suit, entry, disturbance or interruption, of the said . . . . ., his heirs or assigns, or of any person or persons lawfully claiming or to claim by, from or under, him, them or any of them.

Second : The said . . . . . shall, from henceforth, have, hold, possess and enjoy, in severalty by himself, etc., [proceed to set his share, as above, and add the covenants].

In witness, etc.

*Deed of Surrender of a Term of Years to the Person having the Reversion.*

This indenture, made the . . . . . day of . . . . ., between . . . . ., of, etc., of the one part, and . . . . ., etc., of the other part. Whereas, the said . . . . ., by his indenture of lease, bearing date, etc., did demise, set and to farm let, etc., [reciting the property and the term, as in the lease]. Now, these presents witness, that for and in consideration of . . . . ., to the said . . . . ., in hand paid, at the sealing and delivery of these presents, by the said . . . . ., and to the intent and purpose that the said term in the said land and premises may be wholly merged and extinguished, he, the said . . . . ., hath given, granted and surrendered, and by these presents doth give, grant and surrender, unto the said . . . . . and his heirs, all the said lands and premises in the said indenture of lease, contained and demised as aforesaid, and all the estate, right, title, interest, term of years, property, claim and demand, whatsoever of him, the said . . . . ., of, in, to or out of, the same, or any part or parcel thereof : To have and to hold the said lands and premises to the said . . . . ., his heirs and assigns, and to his and their only proper use and behoof.

And the said . . . . . doth hereby, for himself, his heirs, executors and administrators, covenant and agree to and with the said . . . . ., his heirs and assigns, that he, the said . . . . ., hath not, at any time heretofore, made, done, committed, executed, permitted or suffered, any act, deed, matter or thing, whatsoever, whereby or wherewith, or by reason or means whereof, the said lands and premises hereby assigned or surrendered, or any part or parcel thereof, are, or is, or may, can or shall be, anyways impeached, charged, affected or incumbered.

In witness whereof, etc.

*Deed of Surrender of a Lease by Indorsement.*

Whereas, the within-named . . . . . hath lately sold the freehold and inheritance of the land and premises, by the within indenture demised to . . . . ., and the same have been conveyed to him, the said . . . . ., his

heirs and assigns forever : Now, know all men by these presents, that in consideration of ..... to the within-named ...., by the said ...., in hand paid at the ensembling and delivery of these presents, he, the said ..... , at the request and desire and upon the acceptance of the said ..... , hath bargained, sold, surrendered, yielded and given up, and by these presents doth bargain, sell, surrender, yield and give up, unto the said ..... and his heirs, all and singular the lands and premises by the within-written indenture, demised or mentioned, or intended so to be ; and all the estate, right, title, interest, term of years, property, claim and demand, of him, the said ..... , of, in or to, the same, or any part or parcel thereof, to the end and intent that the residue and remainder of the within-mentioned term may become and be merged and extinguished in the estate of freehold vested in the said ..... , of and in the said lands and premises. And the said ..... doth hereby, etc. [Covenants, as before.]

In witness, etc.

*Deed of Surrender of a Lease to the Lessor by Indorsement*

Know all men by these presents, that I, the within named ...., in consideration of ...., to me in hand paid, at and before the ensembling and delivery of these presents, do, for me, my executors and administrators, bargain, sell, surrender and yield up, from the day of the date hereof, unto the within named ..... , and his heirs, [or, "his executors and administrators"], as well the within indenture of lease, as the land and premises therein mentioned, and the term of years therein yet to come, with all my right, title and interest, thereto, and that free and clear of all incumbrances of what kind soever, at any time, by me, or by my privy, consent or procurement, done, committed or suffered.

In witness, etc.

*Deed of Release by a Mortgagee to the Mortgagor, of part of the Mortgaged Lands, part of the Money being Paid—To be used in Special Cases.*

This indenture, made this .... day of ...., between ..... , of, etc., and ..... , of, etc. Whereas, the said ..... , by his indenture of mortgage, bearing date the .... day of .... did, for the consideration therein specified, and for securing the payment of the moneys therein mentioned, convey to the said ..... , certain lands situate at ...., and of which the lands hereinafter contained are part and parcel. And, whereas, the said ..... hath, on the day of the date hereof, paid unto the said ..... the sum of ...., part of the moneys so intended to be secured, and all interest due and owing for the whole principal money, so that there is due to the said ..... upon the said security the sum of ...., principal money, and no more. And, whereas, the said ..... , at the desire and request of the said ..... , hath agreed to surrender and release to the said ..... , his heirs and assigns, the lands hereinafter described, and to accept and take the residue of the mortgaged land as his security for the sum remaining due, as aforesaid, and the interest thereof. Now, these presents witness : That the said ..... , in pursuance of the said agreement, and in consideration of one dollar, to him in hand paid, at and before the ensembling and delivery



of these presents, by the said . . . . ., hath granted, released, assigned and made over, and by these presents doth grant, release, assign and make over, to the said . . . . ., and to his heirs and assigns, all the part of the said mortgaged lands, described and bounded as follows, that is to say, etc., with the hereditaments and appurtenances to the same belonging, and all the right, title and interest, of the said . . . . ., of, in or to, the same, to the intent that the lands aforesaid and hereby conveyed, may be discharged from the said mortgage, so that the rest of the lands, in the said mortgage specified, may remain to the said . . . . . as heretofore. To have and to hold the lands and premises hereby released and conveyed to the said . . . . . his heirs and assigns, to his and their only proper use and behoof forever.

In witness, etc.

*Deed of Release of Dower by a Widow.*

[For Oregon.]

To all to whom these presents shall come, . . . . ., of, etc., relict of . . . . ., late of, etc., send greeting: Know ye, that the said . . . . ., for and in consideration of . . . . ., to her in hand paid, at or before the ensealing and delivery of these presents, by her son, . . . . ., of, etc., hath granted, remised, released and forever quitclaimed, and by these presents doth grant, remise, release and forever quitclaim, unto the said . . . . ., his heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim and demand, whatsoever, in law and in equity, of her, the said . . . . ., of, in and to [a certain parcel of land, etc., or if the release is intended to be a general one, say:] all and every, the messuages, lands, tenements and real estate, whereof the said . . . . . died seized or possessed, or whereof he was seized or possessed, at the time of his intermarriage with the said . . . . ., or at any time since, wheresoever the same may lie and be situate, so that she, the said . . . . ., her heirs, executors, administrators or assigns, nor any other person or persons for her, them or any of them, have, claim, challenge or demand, or pretend to have, claim, challenge or demand, any dower or thirds, or any other right, title, claim or demand, of, in or to, the same, or any part or parcel thereof, in whosoever hands, seizin or possession, the same may or can be, but thereof and therefrom shall be utterly barred and excluded forever by these presents.

In witness, etc.

*Deed of Release of Dower.*

[For Oregon.]

Know all men by these presents, that . . . . ., the widow and relict of the within named . . . . ., lately deceased, in consideration of the sum of . . . . dollars, to her in hand paid by the within named . . . . ., of, etc., at or before the execution of these presents, the receipt whereof, etc., and for divers other good causes and considerations, her thereunto moving, hath remised, released and forever quitclaimed, and by these presents doth, for herself, her heirs, executors and administrators, remise, release and forever quitclaim, unto the said . . . . ., his heirs and assigns, all the dower, and right and title of dower, and all other the estate, right, title, interest,

claim and demand, whatsoever, both at law and in equity, of her, the said . . . . ., which she now hath, or which she, her heirs, executors or administrators, can or may at any time hereafter have, claim or demand, of, in, to or out of, all and singular, the said land and premises, by the within indenture, conveyed or mentioned, or intended so to be, or their appurtenances, or any part thereof, so that she, the said . . . . ., her heirs, executors and administrators, or any of them, shall not, nor will, at any time hereafter, have, claim or pretend to, any such dower, or right or title of dower, or other estate, right, title, interest, pretense, claim or demand, as aforesaid, of, in, to or out of, the said premises or any part thereof, with their appurtenances, but of and from the same, and every part thereof, shall and will be from henceforth utterly debarred and excluded forever by these presents. In witness, etc.

*Deed of Gift of Personal Estate.*

Know all men by these presents, that I, . . . . ., of, etc., in consideration of the natural love and affection which I have and bear for my son, . . . . ., and also for divers other good causes and considerations, me, the said . . . . ., hereunto moving, have given, granted and confirmed, and by these presents do give, grant and confirm, unto the said . . . . ., all and singular, my goods, chattels, leases and personal estate whatsoever, in whose hands, custody or possession, soever they be. To have, hold and enjoy, all and singular, the said goods, chattels and personal estate aforesaid, unto the said . . . . ., her executors and administrators and assigns, to the only proper use and behoof of the said . . . . ., her executors, administrators and assigns, forever. And I, the said . . . . ., all and singular, the said goods, chattels, personal estate and other the premises, to the said . . . . ., her executors, administrators and assigns, against the said . . . . ., my executors and administrators, and all and every other person or persons whatsoever, shall and will warrant and forever defend, by these presents: of all and singular, which said goods, chattels, personal estate and other premises, I, the said . . . . ., have put the said . . . . . in full possession, by delivering to her one pewter dish at the time of the sealing and delivery of these presents, in the name of the whole premises hereby granted.

In witness, etc.

*Deed of Gift by a Father to a Son of his Personal Property, on Conditions.*

This indenture, made the, etc., between . . . . ., of, etc., of the one part, and . . . . ., of, etc., of the other part. Whereas, the said . . . . ., being the father of the said . . . . ., by reason of his age and infirmities, is not capable of attending to his estate and affairs as formerly, and has therefore agreed, for advancement of the said . . . . ., to make over his property to the said . . . . ., so that the said . . . . . should pay the debts of the said . . . . ., and afford him a maintenance as is hereinafter mentioned. Now, this indenture witnesseth, that the said . . . . ., in order to carry the said agreement into effect, and in consideration of the natural love and affection which he hath for and toward his son, the said . . . . ., and of the provisos, covenants and agreements, hereinafter mentioned, by the said . . . . ., to be observed and performed, hath given, granted, bar-

gained, sold and assigned, and by these presents doth give, grant, bargain, sell and assign, unto the said . . . . ., his executors, administrators and assigns, all and singular, his household goods, and implements of household stock in trade, debts, rights, credits and personal estate, whereof he is now possessed, or anyways interested in or entitled unto, of what nature or kind soever the same are, or wheresoever or in whosoever hands they be or may be found, with their and every of their rights, members and appurtenances. To have and to hold the said goods, household stuff, stock in trade, debts, rights and personal estate, and the other the premises, unto the said . . . . ., his executors, administrators and assigns forever, without rendering any account or being therefor in any wise accountable to the said . . . . ., his heirs, executors or administrators, for the same.

And the said . . . . ., for himself, his heirs, executors and administrators doth covenant, promise, grant and agree, to and with the said . . . . ., his executors, administrators and assigns, in manner and form following: that is to say, that he, the said . . . . ., his heirs, executors and administrators, shall and will settle, pay, discharge and satisfy, or cause to be settled, paid, discharged and satisfied, all accounts, debts, judgments and demands, of every nature and kind whatsoever, now outstanding against, or now due from, or payable by the said . . . . ., or for the payment of which the said . . . . . shall be liable, or be held liable, either at law or equity, on account of any matter, cause or thing, heretofore had, suffered, done or performed, and at all times hereafter, free, discharge and keep harmless and indemnified, the said . . . . ., his heirs, executors and administrators, from all and every such accounts, debts, judgments and demands, and from all actions, suits and damages, that may to him or them arise, by reason of the non-payment thereof; and moreover, that he, the said . . . . ., his heirs, executors and administrators, shall and will yearly and every year, during the term of the natural life of the said . . . . ., by four equal quarterly payments, the first to begin on the . . . . day of . . . . next, well and truly pay, or cause to be paid, to the said . . . . . or his assigns, the sum of . . . ., for, or toward his support or maintenance, and find or provide for him sufficient meat, drink, washing, lodging, apparel and attendance, suitable to his state and situation, at the choice and election, from time to time, of the said . . . . .

*Provided*, always, and upon this condition, and it is the true intent and meaning of these presents, that if the said . . . . ., his heirs, executors and administrators, shall neglect or refuse to pay the said accounts, debts, judgments and demands, according to his covenant aforesaid, or shall suffer the said . . . . . to be put to any cost, charge, trouble or expense, on account of the same, or shall neglect or refuse to pay the said annual sum, in manner aforesaid, or to find and provide for the said . . . . . as aforesaid, that then in all, any or either, of the cases aforesaid, it shall and may be lawful to and for the said . . . . ., all and singular the premises hereby granted, to take, repossess and enjoy, as in his former estate.

In witness, etc.

*Deed of Gift of Goods, to be used by the Giver during Life.*

Know all men by these presents, that I . . . . . of . . . ., in consideration of the natural love and affection which I have and bear to my nephew,

.... ., of ...., and for and toward the better support and maintenance of him after my decease, and for divers other good causes and valuable considerations me thereunto especially moving, have given, granted and sold, and by these presents do give, grant and sell, unto the said .... ., all and singular my goods and chattels, whatsoever and wheresoever, and of what nature, sort or kind soever : To have and to hold the said goods and chattels hereby granted, bargained and sold, and every part and parcel thereof, unto the said .... ., his executors, administrators and assigns, as his and their own proper goods, chattels and effects, from henceforth forever : *provided*, always, and these presents are upon this especial trust and confidence, and upon this express condition, that he, the said .... ., his executors, administrators and assigns, shall and do permit and suffer me, the said .... ., to use, keep and enjoy, all and singular, the said goods and chattels, [or if a part, specify them], during my natural life, without paying or yielding anything for the same, or in respect thereof, and not otherwise ; and that from and after my decease, he, the said .... ., his executors, administrators or assigns, shall, or lawfully may have, hold and enjoy, the same, and every part and parcel thereof, and dispose thereof, and convert the same to his own proper use and behoof, as he or they shall think fit.

In witness, etc.

*A Grant of an Annuity by Indenture.*

This indenture, made, etc., between .... ., of ...., of the one part, and .... ., of ...., of the other part : Witnesseth, that the said .... ., for and in consideration of the sum of ...., to him in hand well and truly paid, by the said .... ., at or before the sealing and delivery of these presents, the receipt whereof the said .... . doth hereby acknowledge, hath given, granted and confirmed, and by these presents doth give, grant and confirm, unto the said .... . and his assigns, one annuity of ...., to be received, taken, had and to be issuing, out of all that messuage, etc., with all and singular the appurtenances thereunto belonging, and every part and parcel thereof, unto the said .... ., and his assigns, for and during the natural life of him, the said .... ., payable, and to be paid, at and upon ...., yearly, by even and equal portions : the first payment to begin and made at or upon .... And if it shall happen that the said annuity of ...., or any part thereof, be behind or unpaid, in part or in all, by the space of twenty-one days next after either of the said days or times of payment thereof, whereupon the same should or ought to be paid, as aforesaid : that then, and so often, at any time thereafter, it shall and may be lawful to and for the said .... . and his assigns, into and upon the said messuage and premises above-mentioned, or any part thereof, to enter and distrain, and the distress and distresses then and there found, to take, lead, drive, carry away and impound, and the same impound, to take, hold and keep, until the said annuity and the arrears thereof (if any shall be), together with all costs and charges thereabout or concerning the same, shall be fully paid and satisfied. And the said .... ., for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said .... ., his executors, administrators and assigns, that he, the .... ., his heirs, executors or administrators, shall and will, well and

truly pay, or cause to be paid, unto the said . . . . ., his executors, administrators or assigns, the said annuity, or yearly rent, charge, etc., above, at the days and time, and in manner and form, as above expressed, and limited for payment thereof, according to the true intent and meaning of these presents. And also that the said messuage, etc, above-mentioned, to be charged and chargeable with the said annuity hereby granted, shall, from time to time, be and continue over, and sufficient for the payment of the said annuity of . . . . ., yearly, during the life of the said . . . . .

In witness, etc.

## COPYRIGHT.

### UNITED STATES LAW OF COPYRIGHT.

**What may be Copyrighted.**—Any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor, of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and his executors, administrators, or assigns, shall, upon complying with the provisions of the copyright law, have the sole liberty of printing, re-printing, publishing, completing, copying, executing, finishing, and vending the same; and, in case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others; and authors may reserve the right to dramatize or to translate their own works.

**Notice to Be Given.**—No copyright is valid unless notice is given by inserting in the several copies of every edition published, on the title page or the page following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same is mounted,

the following words, viz.: "Entered according to act of Congress, in the year —, by —, in the office of the Librarian of Congress, at Washington."

**Fee to Be Paid.**—A fee of fifty cents, for recording the title of each book or other article, must be inclosed with the title as above, and fifty cents in addition (or one dollar in all) for each certificate of copyright under seal of the Librarian of Congress, which will be transmitted by return mail.

**Deposit of Article.**—Within ten days after publication of each book or other article, two complete copies of the best edition issued must be mailed to perfect the copyright, with the address.

**Duration of Copyright.**—Each copyright secures the exclusive liberty of publishing the book or article copyrighted for the term of twenty-eight years. At the end of that period, the author or designer may secure a renewal for the further term of fourteen years, making forty-two years in all.

**Assignment of.**—Any copyright is assignable in law by any instrument of writing; but such assignment must be recorded in the office of the Librarian of Congress within sixty days from its date. The fee for this record is fifteen cents for every one hundred words, and ten cents for every one hundred words for a copy of the record of assignment.

**In the case of books** published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright must be taken out for each volume of a book, or number of a periodical, or variety, as to size or inscription, of any other article.

**Description, etc.**—To secure a copyright for a painting, statue, or model or design, intended to be perfected as a work of the fine arts, so as to prevent infringement by copying or vending such design, a definite description of such

work of art must accompany the application for copyright, and a photograph of the same, at least as large as "cabinet size," should be mailed to the Librarian of Congress within ten days from the completion of the work.

**In all cases where a copyright is desired for any article not a book,** the applicant should state distinctly the title or description of the article in which he claims copyright.

**In whose Name Issued.**—Every applicant for a copyright must state distinctly in whose name the copyright is to be taken out, and whether the title is claimed as author, designer, or proprietor.

**Penalty for False Notice.**—Inserting or impressing in an article that may be copyrighted, a notice that the same is copyrighted, when it is not, subjects the offender to a penalty of one hundred dollars, one half to the person who shall sue for the same, and the other to the United States, to be recovered by actions in any court of competent jurisdiction.

**Infringement of Copyright of Book.**—After a book is copyrighted, any person who shall, without the consent of the proprietor first obtained in writing, signed in the presence of two or more witnesses, print, publish, or import, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, such offender shall forfeit every copy thereof to said proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

**Infringement of Copyright of Map, etc.**—Any person infringing, selling, or offering for sale, any copy of a copyrighted article, except books, shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his

possession, or which have been by him sold or exposed for sale; one half thereof to the proprietor, and the other to the United States, to be recovered by action in any court of competent jurisdiction.

**Infringement of Copyright of Dramatic Composition.**—The penalty for infringement of the copyright of a dramatic composition, is not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear just.

**Infringement of Manuscript.**—Publishing of the manuscript of an author, without leave, subjects the offender to all damages the author may sustain by reason of each publication.

**Limitation of Actions.**—No actions shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

## CORONER.

**Coroner, Election of.**—In California, Nevada and Idaho, it is provided that one coroner shall be elected from each county, to serve for two years, and to give bond in the sum of five thousand dollars. In some of the counties his bond is fixed at a different amount, and in some, his office is united with that of public administrator.\*

**In San Francisco.**—In San Francisco, his bond is given under the provisions of the consolidation act, and his compensation in the form of a salary. He is allowed a sum not to exceed fifty dollars per month for making analyses, and for interments, not exceeding ten dollars in each case.

**To act as Sheriff.**—The coroner shall perform the duties

\* In Nevada and Idaho, justices of the peace act as coroners.



of sheriff in all cases where the sheriff is interested, or otherwise incapacitated from serving; and also, in cases of a vacancy by death, resignation or otherwise, in the office of sheriff, the coroner shall discharge the duties of such office until a sheriff is elected and qualified. When both are parties to the action, or when either one is prosecuted for disobedience, an elisor may be appointed.

**Whenever the Coroner acts as sheriff, he shall possess the powers and responsibilities and perform all the duties of sheriff, and shall be liable on his official bond, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services.**

**Duties of.**—When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is, or cause it to be exhumed, if it has been interred, and forthwith summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith at the place where the body of the deceased is, to inquire into the cause of the death.

**Defaulting Juror.**—Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the coroner, in the name of the people of the state, before any justice of the peace in the proper township, and when collected, to be paid over to the county treasurer for the use of the county.

**Duty of Jury.**—When six or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where and by what means, he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence afforded them or arising from the inspection of the

body. [Same in Nevada and Idaho.] If a juror neglect or refuse to attend, he may be fined in the sum of fifty dollars. [California alone.]

**Witnesses.**—The coroner may issue subpoenas for witnesses, returnable forthwith, or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses every person, who, in his opinion or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

**A Witness served with a Subpoena** may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

**Verdict of Jury.**—After inspecting the body and hearing the testimony, the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where and by what means, he came to his death; and, if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof.

**Testimony of Witness reduced to Writing.**—The testimony of the witnesses examined before the coroner's jury shall be reduced to writing by the coroner or under his direction, and shall be forthwith filed by him with the inquisition, in the office of the clerk or the district court of the county.

**To File Testimony.**—If, however, the person charged with the commission of the offense be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, to the office of clerk of the district court of the county.

**Arrest of Accused.**—If the jury find that the person was killed by another, under circumstances not excusable or

justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition and be not in custody, the coroner shall issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

**Warrant of Coroner, Service of.**—The coroner's warrant may be served in any county, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county.

**To Pay over Money.**—The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner, to recover the same by a civil action, in the name of the county. [In Nevada and Idaho, no time is specified, but the justice must pay over the money without delay.]

**Duty of Treasurer.**—Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county.

If the **Money in the Treasury** be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of supervisors of the county.

**Supervisors, Duty of.**—Before auditing and allowing the account of the coroner, the board of supervisors shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the

statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased or to the county treasurer.

If the **Office of Coroner be Vacant**, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

**Justice acting as Coroner.**—A justice of the peace acting as coroner shall be entitled to the same fees, payable in the same manner.

**Burial of Body and Fee.**—When an inquest shall be held by the coroner and no person shall offer to take charge of the body of the deceased, it shall be his duty to cause said body to be decently interred, and in case that there shall not be sufficient property belonging to the estate of the deceased to pay the necessary expenses of the said burial, said expenses shall be a legal charge upon his county. The coroner shall be entitled to receive the sum of two dollars out of his county treasury for attending to the burial of such dead body. [Same in Nevada and Idaho, except the fee is five dollars.]

#### OREGON.

**Elections and Qualifications.**—See COUNTY CLERK, Oregon.

**Duties.**—His general duties are the same as in California, which see.

**Fees.**—For taking an inquest concerning the death or dangerously wounding of any person, five dollars. When acting as sheriff, the same fees as sheriff.

In addition to the duties of coroner, as prescribed by California law, Oregon coroners must hold inquests when a person is dangerously wounded.

## FORMS.

*Coroner's Subpena for Jurors.*

State of ....., } ss.  
 County of .....

The people of the State of .... send greeting to Mr. .... :

We command you that, all and singular business and excuses being laid aside, you be and appear before .... county coroner for the county of ....., at the ....., on the .... day of ....., 18.., at .... o'clock, ....., then and there to serve as juror, in a certain inquisition now pending before said county coroner; and herein fail not, or answer the contrary, at your peril.

Given under my hand, this .... day of ....., A.D. 18..

.....,  
 County Coroner.

*Coroner's Subpena for Witnesses.*

State of ....., } ss.  
 County of .....

The people of the state of .... send greeting to Mr. .... :

We command you that, all and singular business and excuses being laid aside, you be and appear before .... county coroner for the county of ....., at my office, on the .... day of ....., 18.., at .... o'clock ....., then and there to testify and give evidence in a certain inquisition now pending before said county coroner—and herein fail not, or answer the contrary at your peril.

Given under my hand, this .... day of ....., A.D. 18..

.....,  
 County Coroner.

*Coroner's Subpena for a Surgeon or Physician.*

State of .... } ss.  
 County of .....

The people of the state of ..... send greeting :

To ....., M.D. :

We command you that, all and singular business and excuses being laid aside, you be and appear before the undersigned, county coroner for the .... county of ....., at ....., on the .... day of ....., 18.., at .... o'clock, ....., then and there to inspect the body of a certain deceased person, and to testify and give evidence in a certain inquisition now pending before said county coroner—and herein fail not or answer the contrary at your peril.

Given under my hand, this .... day of ....., A.D. 18..

.....,  
 County Coroner.

*Oath to Coroner's Jury.*

You and each of you do solemnly swear that you will truly inquire into the cause of the death of the person whose body is now lying here [or, "whose body you have just viewed"], who he was, when, where and by

what means, he came to his death, and into the circumstances attending his death, and render a true verdict thereon, according to the evidence afforded you, or arising from the inspection of the body. So help you God.

*Oath of Witness before Coroner's Inquest.*

You do solemnly swear [or, "affirm"] that the evidence you shall give upon the inquest now pending, concerning the death of ..... [or, "the person now lying here," or, "the person upon whom inquisition is being made"], shall be the truth, the whole truth and nothing but the truth. So help you God.

*Inquisition by Coroner's Jury.*

State of ..... }  
county of ..... }

Before ..... , coroner

In the matter of the inquisition upon the body of ..... , deceased.

We, the undersigned jurors summoned to appear before ..... , the coroner of the ..... and county of ..... , at ..... , on the ..... day of ..... , 18.. , to inquire into the cause of the death of ..... [or, "of a person found drowned in the ..... of .....," or, "found lying dead in the street," or, as the case may be, "whose name is unknown"], having been duly sworn according to law, and having made such inquisition, after inspecting the body, and hearing the testimony adduced, upon our oaths, each and all do say, that we find the deceased was named ..... , was a native of ..... , aged about ..... years, that he came to his death on the ..... day of ..... , 18.. , in this county, by drowning, having been found in the ..... of ..... , at or near the ..... street wharf, and that whether the same was accidental or intentional we have no means of knowing [or, "by poison administered willfully by his own hand," or, "by the hand of," or, "by the means or instigation of some other person to the jury unknown," or, "and we further find, that we believe ..... to be the person by whose act the death of the said ..... is occasioned"—stating the facts, as the case may be].

All of which we duly certify by this inquisition, in writing, by us signed, this ..... day of ..... , 18..

..... ,  
..... , etc.

*Coroner's Certificate of Death.*

Office of the coroner of the ..... and county }  
of ..... }

I, ..... , coroner, do hereby certify, that I held an inquisition upon the body of ..... , a native of ..... , aged ..... years, at No. .... street, on the ..... day of ..... , 18.. Verdict of the jury—death from intemperance.

And I further certify, that I interred the body at the ..... cemetery, in this county, on the ..... day of ..... , 18..

Dated, this ..... day of ..... , 18..

..... ,  
County Coroner.

*Coroner's Warrant.*

State of .....,  
 .... and county of ..... } ss.

The people of the state of ..... send greeting, to any sheriff, constable, marshal or policeman, in said state.

An inquisition having this day been found by a coroner's jury before me, stating that a man, named ...., has come to his death by criminal means, by the act of a man named ...., you are therefore commanded forthwith to arrest the above-named ...., and take him before the nearest or most accessible magistrate in this county.

Given under my hand, in the .... and county of ...., this .... day of ....., 18..

.....  
 County Coroner.

## CORPORATIONS.

**Different Kinds of Corporations.**—In California, there are so many different kinds of corporations provided for by statute that it is impracticable, considering the ground this book is intended to cover, to give an outline of each, therefore nothing but the titles of the different enactments are given, their respective dates and some general remarks applicable to all.

**Corporations in General.**—Passed April 22d, 1850; amended 1862, 1863, 1863-4.

**Insurance Companies.**—Passed April 22d, 1850; amended 1863, 1865-6. Mutual insurance companies.

**Railroad Companies.**—Approved May 20th, 1861; amended 1862, 1863, 1865-6.

**Plank and Turnpike Roads.**—Approved May 12th, 1853; amended 1854, 1857, 1858.

**Wagon Road Companies.**—Approved April 22d, 1853; amended 1856.

**Manufacturing, Mining, Mercantile, Wharfing, Trade, Business and Commercial Corporations.**—Approved April 14th, 1853; amended 1859, 1863, 1863-4, 1865-6. Supplemental Act, 1857; amended 1859.

**Water Companies.**—Approved May 3d, 1852; amended 1858, 1861.

**Canal Companies.**—Approved May 14th, 1862.

**Chambers of Commerce.**—Passed 1865–6.

**Mining Companies.**—Approved March 5th, 1861; amended 1863–4.

**Telegraph Companies.**—Passed April 22d, 1850; amended 1859, 1861.

**Bridge Companies.**—Passed April 22d, 1850; amended 1851.

**Religious, Social, Benevolent and Learned Associations.**—Passed April 22d, 1850; amended 1854, 1859, 1862, 1863.

**Odd Fellows, Temperance Halls, etc.**—Approved May 4th, 1852; amended 1853, 1856. Supplemental Act, approved April 18th, 1857.

**Orphan, Foundling, Cemetery and other Societies.**—Approved March 13th, 1857. Supplemental Act, approved March 12th, 1858.

**Steam Navigation Companies.**—Passed April 22d, 1850.

**Rural Cemetery Associations.**—Approved April 18th, 1859; amended 1863–4.

**Homestead Associations.**—Approved May 20th, 1861; amended 1863–4, 1867–8.

**Saving and Loan Societies.**—Approved April 11th, 1862; amended 1863–4, 1867–8.

**Library Associations.**—Approved April 27th, 1863; amended 1869–70.

**Corporate Powers.**—Corporations are bound to follow strictly the letter of their charter and can exercise no power, unless granted to them or absolutely necessary to carry out the power so granted.

**How Exercised.**—The corporate powers of a corporation can be exercised by the trustees only when duly assembled and acting as a board. Conferring authority to sell and convey the property of a corporation is the exercise of corporate power.



**Liabilities of Corporations.**—An incorporated company is not bound by the acts or admissions of its members, unless acting by its express authority.

**Liability for Corporate Debts.**—If several persons associate themselves together and form a corporation, they cannot be sued as individuals for the debts of the corporation.

**Stockholder's Liability.**—In California, each member of an incorporated company is answerable personally for his proportion of the debts and liabilities of the company. Each corporator is a principal debtor and not a mere surety for the corporation, and in relation to the creditors of the corporation, stands on the same footing as if it were an ordinary partnership.

**Proof to Fix Liability of Stockholder.**—In an action against the stockholders of a corporation to recover the proportional share of each one of the corporate debts, the proof must show that defendant was a stockholder when such debt was contracted. Proof of a judgment against a corporation does not show when the debt was contracted.

**Action to Recover Corporate Debts.**—A joint or several action may be brought against stockholders of a corporation for corporate debts.

**How Liability of Stockholders may be Discharged.**—Each stockholder of a corporation is liable for his proportion of the corporate debts, and any one creditor whose debt is sufficient, may collect of him the entire amount of his liability on all the corporate debts, leaving him to seek contribution out of his co-stockholders. When such stockholder has paid to any one or more creditors the amount of his entire liability, his liability ceases.

**How to Determine the Amount Due.**—To determine how much any one stockholder of such corporation is liable to pay to a corporate creditor, it is necessary to find the whole amount of the indebtedness of the corporation *created while he was a stockholder*; and any one creditor whose demand is large enough may have judgment for the stockholder's proportion of all such corporate debts.

**Libel, Liability of Corporation for.**—A corporation has the capacity to compose and publish a libel, and by reason thereof, when done, becomes liable to an action for damages by the person of and concerning whom the words are composed and published.

#### FORMS.

##### *Election of Directors of ..... Railroad Company.*

At a meeting of the stockholders of the ..... company, held at ..... on the .... day of ....., 18.., in pursuance of a notice published in the ..... and other papers in ....., and in the ..... and ..... by the board of commissioners for receiving subscriptions to the stock of said company, the undersigned, being a majority of said board of commissioners, presided in pursuance of the statute in such case made and provided, and acted as inspectors of the votes of said stockholders for president and directors of said company.

The whole number of shares of the stock of said company is ..... For the office of president, ..... of ....., received the vote of ..... shares, being all the votes cast, and was declared to be unanimously elected.

The following are the names of the ..... directors with the votes of each, respectively :

..... of ....., ..... shares.

..... of ....., ..... shares.

We hereby certify that the above is a correct statement of the election of president and directors of said company and of the result thereof.

.....  
.....

Commissioners.

##### *Certificate of the Trustees of ..... Mining Company.*

This is to certify that the undersigned have this day united themselves and formed a corporation, under the corporate name of the ..... mining company of ..... county.

The company is formed for the purpose of extracting gold and other metals from all ores, in the county of ....., in the state of ..... by a new process discovered by Messrs. ...., and for acquiring, by purchase or otherwise, such real and personal estate as may be necessary to carry on the above-described undertaking.

The amount of the capital stock of the company shall be ..... dollars. The time of its existence shall be ..... years. The stock shall consist of ..... shares of ..... dollars each. There shall be three trustees, and ..... and ....., shall be the trustees to manage the concerns of the company for the first six months. The principal place of business of the company shall be located in the city of .....

In witness whereof, we have hereunto set our hands, at ..... on this ..... day of .....

.....  
.....  
.....

*Certificate of Incorporation.*

Certificate of incorporation of the ..... and ..... water company, a corporation formed for the purpose of furnishing and supplying the city of .... and county of ..... with fresh and pure water.

Article 1. The corporate name of this corporation is and shall be "the .... and ..... water company."

Art. 2. The principal place of business of said corporation is intended to be within the counties of ....., and the principal place of business [or office] of said corporation shall be the city of ....., state of .....

Art. 3. The objects for which this corporation is formed are to supply the city of ..... and county of ..... with fresh and pure water, by conducting and conveying the waters of ..... river into, and distributing the same by means of aqueducts and pipes through, the streets and buildings of said city of ..... and county of ....., and selling the said water.

Art. 4. The amount of the capital stock of this corporation is and shall be the sum of ..... dollars, and the same shall be divided into ..... shares of ..... dollars each.

Art. 5. This corporation shall continue for the period of ..... years from the ..... day of ....., A.D. ....

Art. 6. There shall be .... trustees of this corporation, who shall manage the concerns of the said corporation for the first ..... months after the formation of this corporation. The names and residence of said first ... trustees are as follows: ..... of ....., ..... of .....

In witness whereof, the undersigned have hereunto subscribed their names [and to a duplicate hereof], at ....., this ..... day of .....

.....  
.....

*Certificate of Incorporation of the Savings and Loan Society.*

We, the undersigned, hereby certify, that we have associated ourselves together for the purpose of forming a society, and that we desire to incorporate the same under the provisions of an act entitled "An act to provide for the formation of corporations for certain purposes," passed ....., and in conformity with the requirements of said act, we hereby further certify that the corporate name of this corporation be the .... society; that the object for which it is formed is, that by means of it the members thereof may be enabled to find a secure and profitable investment for small savings and may have an opportunity of obtaining from it the use of a moderate capital, on giving good and sufficient security for the repayment of the same; that the amount of its capital stock shall be ..... dollars, and the number of shares of which said stock shall consist shall be .....; that the society shall go into operation as soon as ..... shares shall have been subscribed for and an installment of ..... dollars per share paid thereon; that the time of its existence shall be .... years, from and after the filing of this act of incorporation; that the number of trustees for the first ..... months shall be ...., and that their names are ....., ....., ..... and ....., and that the principal place of business of the society shall be .....

In testimony whereof, we have hereunto set our hands and seals, in duplicate, in the city of ....., this ..... day of ....., A.D. 18..

..... [L.S.]

..... [L.S.]

..... [L.S.]

*Certificate of Association of ..... Vineyard Society.*

This is to certify that the subscribers hereto, have this .... day of ..... in the year of our Lord ..... {under the act of the legislature of the state of ....., entitled "An act to provide for the formation of corporations for certain purposes," approved .....}, associated themselves together as a corporation for the purpose of manufacturing wine from grapes grown in the county of ....., in the said state of ....., and have determined and agreed as follows:

1st. That the name of this association shall be the ..... vineyard society, and that the capital stock of said company shall be ..... dollars, divided into ..... equal shares of ..... dollars each, and that the principal place of business shall be in ....., county of ....., state of ....., and that the mechanical operations of said company shall be conducted in the said county of ....., at the rancho called .....

2d. That the duration of said association shall extend to and embrace the ..... day of ....., A.D. ....

3d. The affairs of said association shall be managed by a board of ..... trustees, whose names are as follows, to wit: ....., ....., and ....., they being the trustees appointed by the said association to manage its business, under the constitution and by-laws adopted for the first ..... months after the incorporation of the said company and until such time as other trustees are elected, under the said constitution and by-laws, to succeed them.

..... [L.S.]

..... [L.S.]

..... [L.S.]

*Certificate of Incorporation of Benevolent Society.*

State of California, }  
county of ..... } ss.

We, the undersigned members of ....., and judges of the election held as hereinafter mentioned, do hereby certify, that at a meeting of said society, held on the ..... day of ....., A.D. ...., in the city of ....., after due notice thereof previously given by publication in the ..... newspaper, printed and published in ..... city, and in accordance with the ..... article of the by-laws of the society, and which meeting was held for the purpose of electing two trustees of the said society, in the place of ..... and ....., resigned, ..... and ..... were duly elected by a majority of the votes cast at such election, as trustees of the said society, in the place of ..... and .....

Witness our hands, this ..... day of .....

..... [L.S.]

..... [L.S.]

..... [L.S.]

Judge of Election.

*Certificate, Etc., of ..... Benevolent Society.*

State of ..... }  
 city of ....., county of ..... } ss.

To all whom these presents may concern:

We, ....., and ....., residents of the city of ....., county of ..... and state aforesaid, members of the society hereinafter mentioned, and judges of election at the meeting hereinafter mentioned, do certify, that on the ..... day of ..... A.D. ...., a meeting of the members of the ..... benevolent society—a society not yet incorporated—was holden agreeably to public notice, for the purpose of incorporating themselves, pursuant to the provisions of an act, passed by the legislature of the state of ....., on the ..... day of ....., A.D. ...., entitled ....., and the said meeting, having been duly organized, ..... presiding and ..... acting as secretary, did then and there unanimously resolve, that said society should thenceforth assume corporate powers in pursuance with the act referred to, and should forever thereafter be called and known as the “..... benevolent society.” And we further certify, that the said society at the meeting on the day and year aforesaid, proceeded to an election by ballot, of officers for the said society for the term of ..... thence next ensuing, and that we, the said ....., ..... and ....., having been duly appointed judges of said election, upon canvassing all the votes polled at said election, did return the following persons elected as officers of said society, viz: ..... and ..... And said meeting did then and there unanimously determine that said officers and their successors should forever thereafter be called and known by the name and style of “the board of directors of the ..... benevolent society,” and that the said board of directors shall have the full charge and control of the estate and property, and the management of all affairs relating to the estate of said society, pursuant to the provisions of the statute above mentioned.

And we further certify that the said election was fairly and legally conducted, and in strict conformity with the rules and regulations of said society.

In witness whereof, we have hereunto set our hands and seals this .... day of ....., A.D. ....

..... [L.S.]

..... [L.S.]

..... [L.S.]

*Incorporation of a Lodge.*

This is to certify, that on the .... day of ....., at a regular meeting of .... temple of honor, No. ...., in ....., state of ....., the following persons whose names here appear, viz: ....., were in accordance with the constitution and laws of said temple of honor, duly elected trustees, known and to be hereafter forever known as “the board of trustees of funds and investments of .... temple of honor, No. ....”

This further certifies that I, ....., on the evening and at the meeting aforesaid, was the legal and constitutional ..... of said temple of honor, and acted as judge of said election.

....., A.D. ....

.....

*Incorporation of the ..... Mission of the State of California.*

## CERTIFICATE OF THE ELECTION OF TRUSTEES

We, the undersigned subscribers to the fund for the establishment of the ..... mission for the state of ....., a religious association, located at the city of ....., in said state, certify that pursuant to notice previously given, we convened in the city of ....., on the .... day of ....., A.D. .... for the purpose of electing five trustees of said association, that ..... was chosen chairman and ..... secretary; and the meeting being thus organized, we proceeded to the election of five trustees, and the following-named persons were duly elected trustees of the ..... mission for the state of ....., to be thereafter known and called by such name and title:..... and .....

Dated at ....., the .... day of ....., A.D. ... ..  
 .....

*Report of Trustees of a Benevolent Association.*

The ..... mission for the state of California, by the trustees, report that the property, real and personal, held in trust by them, consists of ....., in the city of ....., originally costing ..... dollars, and now to be valued at ....., and that the said corporation are indebted to ..... in the sum of .....

.....  
 Trustee.

*Incorporation of a Church.*

We, the undersigned members of . . . . society of ....., and judges of election, at a meeting of said society, held in the vestry of the church, on .... street, on .... evening, the .... day of ....., A.D. ...., pursuant to notice previously given, in accordance with the constitution of said society, do hereby certify that at the meeting aforesaid, Messrs. ...., and ....., were duly chosen by ballot as trustees of said society, they and their successors to be known hereafter as "the board of trustees of the ..... society of ....., " and as such to have charge of all the property of said society and perform all the duties usually connected with the office, and that immediately after the said election the said six trustees were divided by lot into three classes of two in each class, in accordance with article .... of the constitution of said society, Messrs. .... and ..... to hold their offices until the next annual meeting of the society, and until their re-election or others shall be elected in their places; Messrs. .... and ..... to hold their offices until the second annual meeting hereafter and until their places shall be filled by a new election, and Messrs. .... and ..... to hold their offices until the third annual meeting hereafter and until a new election to supply their places: So that at each annual meeting of the society there shall be elected two trustees to supply the places of the two trustees whose term of office shall then expire, who shall hold their offices for the term of three years and until suspended by a new election.

We also certify that .... was chosen as moderator of the society and chairman of the board of trustees; .... as treasurer, and .... as clerk, to hold their offices for .....

Witness our hands and seals in ....., this ..... day of ..... A.D. ....

..... [L.S.]

Signed and sealed in presence of

..... [L.S.]

.....

Judges of Election.

*Report of Trustees of a Church.*

To the first ..... society in the city of ....., state of .....

The undersigned trustees of your society, in pursuance of the .... section of an act of the legislature of the state aforesaid, entitled ....., passed .... respectfully report that the following is all the property, real and personal, held by your trustees in trust for said society, to wit: ....., and valued by us in all at ..... dollars, which property is subject to a mortgage of ..... dollars, now overdue and on interest, payable .... at the rate of .... per ....

There is also a street-assessment lien upon said property for grading and planking in front thereof, amounting to ..... dollars.

There is also owing and due to the Rev. ...., the sum of ..... dollars, as pastor of ....., from the ..... day of ....., to the ..... day of ....., ....

And there is now due to said society from individual pewholders, for rent from ....., to ....., the sum of ..... dollars.

All of which is respectfully submitted.

.....  
.....  
.....

Secretary of the Board.

*Proceedings by a Church to Effect a Loan by Mortgage*

PETITION.

To the hon. the district court of the .... judicial district of the, etc., etc.

Your petitioners, "the trustees of the ..... church of the city of .....", in the said state of California, represent to this honorable court, that they are a religious corporation duly incorporated according to the provisions of the statutes of this state, under the corporate name of "the trustees of the ..... church of the city of ....."

That they are seized and possessed as such trustees as aforesaid, of certain real estate situated in said city and county of ....., bounded and described as follows: [here insert description].

Your petitioners further represent that ....., etc., etc., are the present trustees of said church and compose said corporation, and that ..... is president, and ..... secretary of said board of trustees.

Your petitioners further represent that there is erected and now standing and being upon said lot hereinbefore described, a large and valuable building used by said church and the congregation connected therewith, for stated meetings for religious worship.

That the said corporation is now indebted in the sum of about ..... dollars, which indebtedness has been contracted for the improvement of said property, and the benefit of said church and congregation.

And your petitioners further represent that the immediate necessities of

said church and corporation require that said trustees should have at their disposal, for the meeting of the necessities of said church and congregation, the sum of ..... dollars.

Your petitioners further represent, that they have no money whatever on hand belonging to said corporation.

That the current receipts are about sufficient to meet the current expenses of said church and the interest on the sum of .... dollars, at the rate of .... and ..... per cent. per .....

And your petitioners further represent that they can procure the said sum of ..... dollars for the period of ....., with the privilege of continuing the same for ....., at the rate of ..... per cent. per ..... interest, and that your petitioners are unable to obtain the same at any less rate of interest or on any more favorable terms than above-named.

And your petitioners further represent, that at a meeting of the said church and congregation, held at the meeting-house of said church, on the ..... day of ....., A.D. ...., a resolution was adopted by a unanimous vote of the members present, directing your petitioners to effect a loan not exceeding ..... dollars, for the purpose above-named, a copy of which resolution is hereto annexed, marked "A." That said meeting at which said resolution was adopted was duly called and notice thereof given from the pulpit on the preceding sabbath for that especial purpose.

And your petitioners further represent, that in accordance with said resolution your petitioners have this .... day of ....., A.D. 18.., held a meeting at which all the members of said corporation were present, where a resolution was duly adopted, a copy of which is hereto annexed, marked "B."

And your petitioners represent, that it would be for the benefit and interest of said church and congregation that said loan should be made, and said note and mortgage be executed.

Wherefore, your petitioners pray that an order may be made by this court for the mortgaging of said real estate to secure the payment of such loan, not exceeding ..... dollars, as said corporation can effect for the period of .... year.. or longer, not exceeding ....., at a rate of interest not exceeding ..... per cent. per ....; and also allowing said corporation trustees as aforesaid, to make and deliver with said mortgage a promissory note, under the corporate seal and in the corporate name of said corporation, for the said sum so obtained as aforesaid, to any person furnishing said sum of money as aforesaid.

Dated .....

.....;

.....;

....., etc.,

Trustees of the church.

County of ....., ss.

...., of said city and county, being duly sworn, says, that he is a member and secretary of said corporation, in the foregoing petition mentioned. That he has read the said petition and that he believes the same to be true.

Sworn to before me this .... day of ....., A. D. 18..

[L.S.]

....., Notary Public.



*A—Resolution referred to in foregoing Petition.*

At a meeting of the church and congregation of the .... church, of the city of ...., California, held pursuant to a call and due notice for that purpose, on the .... day of ...., A.D. 18.., the following resolution was adopted by a unanimous vote of all the members present :

*Resolved*, That the trustees of this church be and they are hereby instructed to procure a loan not exceeding ...., for a period not exceeding .... years, at a rate of interest not exceeding .... and a .... per cent. per ...., to pay the present indebtedness and meet such other present necessities as the corporation shall be compelled to meet for the benefit of the church ; and the said trustees are also instructed to make application to the .... district court for an order allowing them to make and execute a promissory note and mortgage on the real property of said corporation for the amount ; and on obtaining such order, to execute and deliver to any person who will furnish such sum of money on the terms aforesaid, a note and mortgage for such sum, according to law.

....., Clerk.

*B—Resolution referred to in foregoing Petition.*

At a meeting of the trustees of the .... church of the city of ...., held on the .... day of ...., 18.., all the members being present, the following resolution was adopted :

*Resolved*, That the petition drawn up to be presented to the .... district court be now signed by the members of the board ; and that said petition be then presented to said court, and that on obtaining the proper order therefor, a loan, not exceeding ...., be made, and a note and mortgage executed therefor, according to law and the terms of said order

.....,  
Secretary of the board, etc.

*Order of Publication on foregoing Petition.*

.... district court, county of ....

In the matter of the application of .... }  
trustees ..... church, for power }  
to mortgage, etc.

On reading the annexed petition of "the trustees," etc., a religious corporation, and on motion of ...., in behalf of said corporation:

It is ordered, that said petition be presented, and said application made to the said .... district court, at the court-room thereof, etc., on ...., the .... day of ...., A.D. 18.., at the opening of the court of that day, or as soon thereafter as said application can be heard.

And it is further ordered, that a notice of said application be published in said city and county, each day for five days immediately preceding said application.

Dated .....

.....,  
Judge .... district.

## NOTICE.

.... district court.

In the matter of the application of the }  
trustees of church to mortgage, etc. }

Notice is hereby given, that application will be made by "the trustees," etc., a religious corporation, to the district court, etc., on, etc., at the court-room, etc., at the opening of the court on that day, or as soon thereafter as such application can be heard, for an order allowing the corporation aforesaid to execute a promissory note for a sum not exceeding ...., and also to execute a mortgage upon the real estate of said corporation, to secure payment thereof.

Dated, etc.

....., Clerk.

By ..... , Deputy.

*Affidavit of Publication of the above Notice*

County of ...., ss:

...., of the said county being duly sworn, deposes and says, that he is the proprietor and publisher of the ...., a newspaper published daily in said county, and has charge of all the advertisements in said newspaper, and that the foregoing notice in the case of "the trustees," etc., has been published in the .... for five successive days from .... to ...., 18.., and further sayeth not.

Sworn to this .... day of ...., A.D. 18.., before me.

....., Notary Public.

*Order of Court authorizing the Church to give the Mortgage, etc.*

In the district court of the ..... judicial district, county of .....

In the matter, etc., of .... }  
of .... church. }

In the above-entitled matter, on reading and filing the the petition of "the trustees," etc., and it satisfactorily appearing to me therefrom that it will be to the benefit, interest and advantage, of such church and congregation, to grant the prayer of said petition, and it also satisfactorily appearing to the court, by competent proof, that due notice of this application has been given:

Now, therefore, on application of said trustees, by their attorney, ...., it is ordered that the said trustees may make, execute and acknowledge, under and in the corporate name and seal of said trustees, a mortgage upon the property described in said petition, to secure the payment of such sum not exceeding ...., as they can obtain at a rate of interest not exceeding .... and .... per cent. per ...., for a period not exceeding ...., and to deliver the same to any person who will furnish such sum of money on the terms aforesaid. And it is further ordered, that the said corporation may execute and deliver with such mortgage, a promissory note for such amount as aforesaid, under the corporate seal and corporate name of said trustees.

And it is further ordered, that said trustees, on receiving said sum of money as aforesaid, shall appropriate the same, or so much thereof as may

be necessary for that purpose, to the payment of the present indebtedness of said corporation and church, and if any balance remain after the payment of such debts, it shall be used under the direction of said trustees for the benefit of said church.

*Petition for Disincorporation.*

County court in and for the county of ....., state of .....

Matter of the disincorporation of the corporate }  
company "the ..... company." }

To the Hon. ...., judge of the court aforesaid.

The subscribers, being officers of the company aforesaid and also owners of two-thirds of the capital stock, in behalf of the same and the stockholders thereof, respectfully represent, that on or about the ..... day of ..... A.D. ...., said corporation was formed under and by virtue of an act of the legislature of ....., passed .... of ...., A.D. ...., entitled, "An act to provide for the formation of corporations for certain purposes," as will be particularly seen by reference to the certificate of corporation, on file in the office of the county clerk of the county aforesaid; that the business of said corporation was the importation and sale of .... in .... and elsewhere, and the principal place of business of said corporation and place of meeting of the trustees thereof has been ever since the city of ....., state aforesaid; that the business of said corporation and the consequent necessity of its continuance, has entirely ceased; that at the request of stockholders of said company, representing and owning more than two-thirds of the stock thereof, the trustees thereof called a special meeting of the stockholders by advertisement, in accordance with the law and by-laws of said company, to be held on ..... the ..... day of ....., A.D. ...., at ..... o'clock of that day, at the office of ....., in the city of ... , aforesaid, which has been and is also the usual place of meeting of said trustees, to take into consideration the expediency of said disincorporation, and that at said meeting, at the time and place aforesaid, there was present and represented, more than two-thirds of the capital stock of said company, and that said stockholders resolved then and there, unanimously, that said company should be immediately dissolved and disincorporated, which said resolution was adopted by a vote of more than two-thirds of all the stockholders of said company; that other necessary preliminary steps hereto have been taken. and that all valid claims against the corporation have been discharged.

Dated .....

.....,

President.

.....,

Secretary.

*Notice of Publication.*

County court in and for the county of ....., state of .....

Matter of the disincorporation of the corporate }  
company, "the ..... company." }

Notice is hereby given, that on ..... the ..... day of ....., A.D. ...., at the court-room of the county court of the city of .... and county of ...., in said city, at ..... o'clock of that day, will be heard the application and

petition of the officers and stockholders of corporate company, "..... company" (said petition being now on file in the office of the clerk of said court).

The object of said application and petition is to dissolve and disincorporate said company according to law.

Dated .....

.....,

Clerk.

By .....

Deputy.

#### *Order of Disincorporation.*

County court in and for the city of ..... and county of ....., state of .....

In the matter of the disincorporation of the corporate  
company, "..... company."

The petition of the officers and stockholders of the corporate company, "the ..... company," to dissolve and disincorporate said company, coming to be heard, and due proof being made of the publication of the notice of said petition and of the time of hearing thereof, on motion of ....., counsel for said petitioners, it is ordered that the corporate company, known by the name of "the ..... company," be and the same is hereby dissolved and disincorporated.

..... day of ..... A.D. ....

.....,

County Judge.

### COSTS.

#### COSTS IN CIVIL ACTIONS, CALIFORNIA, NEVADA AND IDAHO

**Costs Allowed, "of Course."**—Costs shall be allowed of course to the plaintiff upon a judgment in his favor in the following cases:

- 1st. In an action for the recovery of real property
- 2d. In an action to recover the possession of personal property, when the value of the property amounts to three hundred dollars or over. \* Such value shall be determined by the jury, court or referee, by whom the action is tried.
- 3d. In an action for the recovery of money or damages, where plaintiff recovers three hundred dollars or over. \*
- 4th. In a special proceeding in the nature of an action.
- 5th. See APPENDIX.

**Costs Discretionary with the Court.**—In the following cases the costs of an appeal shall be in the discretion of the court:

\* In Idaho, one hundred dollars is the value fixed.

1st. When a new trial is ordered.

2d. When a judgment is modified.

**Other Costs and Apportionments.**—In other actions than the foregoing, costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than three hundred dollars,\* nor in an action to recover the possession of personal property, when the value of the property is less than three hundred dollars.

**When Tender is Made.**—When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

**In cases of Foreign Corporations and Non-resident Plaintiff.**—When the plaintiff in an action resides out of the state or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

**Affidavit to Bill of Costs and Filing of.**—The party in whose favor judgment is rendered and who claims his costs, shall deliver to the clerk of the court, within two days after

\* In Idaho, one hundred dollars is the value fixed.

the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum shall be verified by the oath of the party or his attorney, stating that the items are correct and that the disbursements have been necessarily incurred in the action or proceeding.

#### FORM.

##### *Cost Bill.*

In the ..... court, ..... district court.

##### MEMORANDA OF COSTS.

[Title of case.]

##### DISBURSEMENTS.

Sheriff's Fees.....\$  
 Clerk's Fees .....  
 Witness' Fees.....  
 Total.....

County of ..... ss.

....., being duly sworn, deposes and says, that he is ..... the attorney for the ..... in the above-entitled action, and as such, is better informed relative to the above costs and disbursements than the said ..... That the items in the above memorandum contained, are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said action.

Subscribed and sworn to before me, this ..... day of ..... A.D. ....  
 .....  
 Clerk.

#### COUNTY CLERK.

CALIFORNIA, NEVADA, IDAHO AND SAN FRANCISCO, CALIFORNIA.

**Election of County Clerk.**—The county clerk is chosen by the electors of the county, to serve for two years.

**Office, where to Keep.**—He is required to keep his office at the county seat of the county, and take charge of, and safely keep or dispose of according to law, all books, papers and records, which may be filed or deposited in his office.

In San Francisco, he is required to keep his office open for the transaction of business on all judicial days (Sunday, New Year's Day, the Fourth of July, Christmas and Thanksgiving days, Twenty-second of February and elec-

tion days, being non-judicial days), during the following hours: from nine A.M. to four P.M.

**Additional Duties.**—In some counties, the county clerk has the additional duties of other officers, as county auditor and county recorder, and in some counties he is clerk of the board of supervisors. He is *ex officio* clerk of the district court and the probate court of his county, and is required, either in person or by deputy, to attend each term of either of said courts held in his county.

**Duties of.**—He shall issue all writs and process required to be issued from any court of which he is clerk; he shall enter, under the direction of the court, all orders, judgments and decrees, proper to be entered; and shall keep in each of said courts a docket, in which shall be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding in said cause, with the date thereof, and a list of all the fees charged in the cause, and shall keep such other books of record as may be required by law or by the rules of the court.

**Deputies, to Appoint.**—Each county clerk may appoint one or more deputies, who shall have the same power, in all respects, as their principal. The appointment shall be in writing and signed by the county clerk, and shall be filed in the office of the recorder of the county. He may revoke the appointment of any deputy at will, by writing, filed in the same office. Each deputy, before entering on his duties, shall take the oath of office, which shall be indorsed on his appointment.

**Bond of Deputies.**—The county clerk may take from each of his deputies a bond, with sureties for the faithful performance of his duties; but the clerk and the sureties on his official bond shall be liable for all the official acts of each deputy.

**Process, how Issued.**—All process issued by any deputy clerk shall be issued in the name of the principal.

**Not to Practice as Attorney-at-Law.**—No clerk or deputy clerk shall be permitted to practise as attorney or coun-

selor-at-law in any action or proceeding in any court whatever ; for violating the provisions of this provision he shall be deemed guilty of a misdemeanor.

**May take Acknowledgments.**—Authority is given him as clerk to take and certify acknowledgments. He is also authorized to administer oaths and affirmations, and to certify the attestations of certain officers.

**Various Duties.**—By various statutory enactments, other duties fall under the province of the county clerk. He receives the election returns of his county, estimates the vote, issues certificates of election, and makes report to the secretary of state. He is required to certify to the governor of certain vacancies in office; also, to notify the governor of applications made under the act concerning applications for pardon of criminal offenses. It is his duty to assist in the drawing of jurors, to record the bonds of public officers, that are required by law to be filed in his office, to record certificates of incorporation of religious and benevolent associations, to file with the county recorder for registry, a statement of any decree of divorce granted, or any letters testamentary or of administration issued, and to furnish certified copies of papers or records under his charge. The records of a justice of the peace of the county are deposited with him, when a vacancy in that office occurs, and upon the filing of a transcript of judgment from a justice's court, he may be required to docket such judgment in the county court judgment docket, and issue execution thereon into any other county of the state. He is also required to deliver the writ of *habeas corpus* to the sheriff or other ministerial officer of the court, when the writ is directed to such officer, and to furnish a bill of items of any fees charged by him when demanded. He is entitled to charge fees as regulated by law, except in a few instances, for all services required of him ; nor can he be compelled to perform any service until the fees fixed by law for such service have been paid or tendered to him. For the collection of any fees due him for services rendered, he may have execution in his own name against the party for whom the services were performed.



## OREGON.

**County Clerk.**—The constitution provides for the election of county clerk, treasurer, sheriff, coronor and surveyor, who shall severally hold their offices for the term of two years, and until their successors are elected and qualified.

**Who Eligible.**—A person is not eligible to either of the above-mentioned offices unless he be a citizen of the United States, an elector and a resident of the county where he is elected for the period of one year next preceding his election. Their terms of office commence on the first Monday of July next following their election; and they must take and subscribe an oath to support the constitution, and give bonds as follows : Sheriff, ten thousand dollars, with two or more sureties who must reside in the county. The undertaking must be approved by the county court and filed with the county clerk, and may be substantially in the following form :

Whereas, at an election held on the .... day of ....., 18..., .... was duly elected sheriff of the county of ....., we, .... and ...., hereby undertake, that if the said .... shall not faithfully pay over according to law all moneys that may come into his hands, by virtue of said office, and otherwise well and faithfully perform the duties of such office, then we, or either of us, will pay the State of Oregon the sum of ten thousand dollars.

**The Official undertaking** of a county clerk or coroner must be given, approved, and filed, in the manner prescribed for the official undertaking of a sheriff, and must be in the same amount, except that of the coroner, which may be in the sum of three thousand dollars, and such undertaking may be in substantially the same form as a sheriff, substituting the name of "coroner," or "county clerk," as the case may be, for that of sheriff.

**Duties.**—His duties are substantially the same as in California, and particularly as follows : He may take depositions, administer oaths, certify and file jury lists, deposit and draw names of jurors, appoint deputy, take proof and acknowledgments of deeds, assist at examination of assess-

ment roll. He must provide books of record, and record, make and give, notice of appointment of judges of election, make notice of election, canvass returns of election and give certificate of election; keep record of estrays, record licenses to agents of foreign vessels, give grand jury list of licenses, issue to sheriff licenses for dance houses, record stock, mark or brand, issue marriage license, file certificate of marriage, record married woman's declaration of separate property, record organization of mining district, appoint deputy for mining districts, record conveyancing of mining claims, give list of taxable property to supervisor, examine return of delinquent taxes and make list of and deliver the same to sheriff.

He shall not act as attorney, and may be punished by fine for neglect of duty.

#### FORMS.

##### *Forms of Oath.*

You do solemnly swear that, etc. So help you God.

You do swear in the presence of the ever-living God [or, "of Almighty God"], that, etc.

##### *Form of Affirmation.*

You do solemnly, sincerely and truly, declare and affirm that, etc.

##### *Assent to Oath or Affirmation.*

I do.

##### *Oath of Foreman of the Grand Jury.*

You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred or ill-will, nor leave any unrepresented through fear, favor or affection, or for any reward or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding. So help you God.

##### *Oath of the other Grand Jurors.*

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.

##### *Oath, as to Excuse of Juror.*

That you will well and truly answer the questions put to you concerning your excuse to serve as a grand [or "trial," as may be] juror. So help you God.

*Oath of Triers, on Challenge to Juror.*

That you will truly inquire whether or not the a or who may be challenged, as trial jurors in this is a . . . . ., plaintiff, and . . . . ., defendant [or, "between in respect to whom the challenges shall be given to y against the challenging party, and decide the same evidence. So help you God.

*Finding of the Triers.*

We find [or, "the majority of the triers find"] the challenge true [or, "not true"].

*Oath as to Competency of Juror.*

That you will well and truly answer such questions as may be put to you concerning your competency to serve as a trial juror in this issue pending between . . . . ., plaintiff [or, "the people of the state of California, complainants"], and . . . . ., defendant. So help you God.

*Oath of Impaneled Jury. "*

You and each of you, do solemnly swear, that you will well and truly try this matter at issue, wherein . . . . . is plaintiff [or, "the people of, etc., as above, are complainants"], and . . . . . is defendant, and a true verdict render therein according to the evidence. So help you God.

*Oath of Interpreter.*

That you will well and truly interpret between the court, the jury, the counsel and the witness [or, "the witnesses"], in this cause, wherein . . . . . is plaintiff and . . . . . is defendant. So help you God.

*Another Form.*

That you will well and truly interpret from French into English and from English into French, the testimony to be given by this witness [or, "the witnesses"], in this issue pending between . . . . ., plaintiff and . . . . ., defendant. So help you God.

*Oath on Voir Dire.*

You do solemnly swear that you will true answers make to such questions as may be put to you touching your interest in the event of this cause between . . . . ., plaintiff, [or, "the people of the state of California, complainants"], and . . . . ., defendant. So help you God.

*Oath of a Witness.*

That the evidence you shall give in this issue pending between . . . . ., plaintiff [or, "complainants"], and . . . . ., defendant, shall be the truth, the whole truth and nothing but the truth. So help you God.

*Oath of Party or Interested Witness, to admit Evidence of the Contents of a Paper not Produced.*

That you will true answers make to such questions as shall be put to you touching the power or control you have over any paper [or, "the loss or destruction of any paper"] which would be proper evidence in this cause. So help you God.

*Of a Party or Interested Witness, preliminary to Proving the Handwriting of a Subscribing Witness.*

That you will true answers make to such questions as shall be put to you touching your [or, "the plaintiff's," or "defendant's"] ability to procure the attendance of . . . . ., a subscribing witness to this paper [or, the paper in question]. So help you God.

*Of Officer, on Retiring with a Jury or Jurors on Leave.*

That you will retire with such jurors as will have leave of absence from this court. You will not speak to them yourself in relation to this trial nor suffer any person to speak to them; and you will return with them without delay. So help you God.

*Upon a Plea of a Former Conviction or Acquittal of the Same Offense.\**

We find for the people [or "for the defendant"].

*Special Verdict, where Defendant is under fourteen years of age, rendered in San Francisco, under the Act in relation to the Industrial School.*

We find that the defendant is under the age of fourteen years, and that he has committed an act which, if committed by a person of responsible age, would warrant a conviction of the offense alleged in the indictment.

*Special Verdicts in Probate Matters—Jury Trial.*

In answer to the question, is . . . . ., the person styling herself . . . . ., in the opposition to the issuance of letters of administration, the surviving wife of . . . . ., deceased? We say, yes.

We find that the said promissory note was not made and executed by the intestate, . . . . ., in his lifetime and delivered to the said . . . . ., for a valuable consideration, and that said promissory note is not a valid claim against the said estate.

*In Action for Damages.*

We find for defendant, [or, "for plaintiff," damages . . . dollars; or, "for plaintiff against defendant," . . . . ., damages . . . . . dollars, and verdict for the defendant . . . . .], [or, if it be a special verdict, insert the same at length].

\* A special verdict need not be in any particular form—it must intelligibly present the facts found by the jury. It must be reduced to writing by the jury or in their presence entered upon the minutes of the court, read to the jury and agreed to by them before they are discharged.

*Verdict, with Assessment of Value of Personal Property.*

We find, [as in the preceding forms and then add:] and the jury assess the value of the said [mention the property in question] at ..... dollars. [If necessary add:] and they further assess the damages of the said defendant by occasion of the delivery and detention of the said property, at . . . dollars.

*Verdict where Personal Property is in Question.*

We find the title of the horse in question to be in the plaintiff, and assess the value thereof at one hundred dollars.

*In Cases of Lunacy, Etc*

We find that ..... is a lunatic, of unsound mind and incapable of managing or conducting his affairs [or, "that ..... was of unsound mind"] at the time of the execution of the will [or, "deed"] in question to wit: on the .... day of ....., 18.., and incompetent to execute the same; [or that ..... was of unsound mind and incompetent to contract matrimony, at the time of solemnization of the marriage to .... .., to wit: on the .... day of ....., 18..].

*In Action for Recovery of Real Property.*

We find the title of the land in question to be in the plaintiff [or, "defendant"; if there is a claim for the mesne profits add:] and assess the damages for withholding the said premises, against the defendant, at .... dollars and .... costs.

*Form of Polling the Jury.*

[Begin with the first name on the panel, as in criminal actions]. ..... you say you find [as the verdict may be: after the answer is given then call at the next juror], .... .., is that your verdict? [Proceed in this manner through the list, and when all have answered, say:] Then, gentlemen of the jury, hearken to your verdict, as the court has recorded it. You say you find [as the verdict may be], and so you say all.

*Entry of Default.*

Clerk's office of the district court of the ..... judicial district, ss.

In this action, the defendants, ..... and ..... .., having been regularly served with process, as appears by the papers on file herein, and having failed to appear and answer the complaint of the plaintiff on file herein, and the legal delay for answering having expired, the defaults of the said defendants, .... .. and ..... .., in the premises, are hereby entered according to law.

Attest my hand and seal of said court this .... day of ....., A.D. 18..

[L.S.]

.....  
Clerk.

.....  
Deputy Clerk.

*Form of Docketing Judgment.*

Name of judgment debtor.	Name of judgment creditor.	Judgment.	Time of entry.	Where entered in judgment book.	Appeal when taken.	Judgment of appellate court.	Satisfaction of judgment entered.
C. D.	A. B.	Dam's., \$555 00 Costs, .... 39 75	18... May ..	Fol. 288.	18... June .	18 .. July .. Judgment affirmed, with 5 percent. damages; costs on appeal taxed, \$60.	Satisfied in full, Aug. .th, 18...

*For Certifying and Transmitting Indictment to the District.*

City and county of ....., ss.

I, ....., county clerk of said city and county, and *ex officio* clerk of the county court thereof, do hereby certify, that on motion of ....., esq., district attorney of said county, made in open court in said county court, on the .... day of ....., 18.., it was ordered by said court, that the indictment found against ....., the within-named defendant, and filed in said court on the .... day of ....., 18.., charging him with the crime of ....., be certified and transmitted to the district court of the .... judicial district of the state of ....., in and for the .... county of ....., for trial.

And in pursuance of the said order, I do hereby certify the within to be the original indictment so found and filed, as aforesaid in said county court, on the .... day of ....., 18.., and do hereby transmit the same to said district court for trial.

Witness my hand and the seal of said county court, this .... day of ....., 18..

.....  
Clerk.  
By .....,  
Deputy.

You are hereby commanded, forthwith, to attach the body of ....., and bring him before the county court of said county, to answer, etc., [as may be].

Witness, hon. ...., county judge of the county of ....., this .... day of ....., 18..

.....  
Clerk  
By .....,  
Deputy Clerk.

*Bench Warrant on a Presentment.*

State of .....,  
county of ..... } ss.

The people of the state of ....., to any sheriff, constable, marshal or policeman, in this state. A presentment having been made, on the .... day of ....., 18.., to the court of ..... of the county of ....., charging .....

..... with the crime of ....., [designating it generally]: You are therefore commanded forthwith to arrest the above-named ....., and take him before ....., a magistrate of this county, or in case of his absence or inability to act, before the nearest or most accessible magistrate in this county.

Given under my hand, with the seal of said court affixed, this .... day of ....., A.D. 18... By order of the court. ....

Clerk.

*Bench Warrant on an Indictment.*

State of ....., }  
county of ..... } ss.

The people of the state of ....., to any sheriff, constable or policeman, in this state: An indictment having been filed, on the .... day of ....., A.D. 18.., in the county court of the county of ....., charging .... with the crime of ....., [designating it generally]. You are therefore commanded, forthwith, to arrest the above-named ....., and bring ... before that court to answer the indictment; or if the court have adjourned for the term, that you deliver .... into the custody of the sheriff of the county of ....., or if ..... require it, that you take .... before any magistrate in that county or in the county in which you arrested ..... that ..... may give bail to answer the indictment.

Given under my hand, with the seal of the court affixed, this the .... day of ....., A.D. 18.. By order of the court. ....

Clerk.

[The above must be indorsed as follows]:

The defendant, ..... to be admitted to bail in the sum of ..... dollars. ....

Clerk.

*Subpena in a Criminal Case.*

The people of the state of ....., to ..... .

You are commanded to appear before the county court of the city and county of ....., state of ....., at the court-house of said court, in the city-hall of said city and county, on the .... day of ....., A.D. 18.., at ten o'clock, A.M., as a witness in a criminal action, prosecuted by the people of the state of ....., against ....., on the part of the defendant. [If books, papers or documents, be required, insert a direction to the following effect in the subpena:] And you are required also to bring with you the following [describe intelligibly the books, papers or documents required].

By order of the court. ....

Clerk.

[L.S.]

By .....  
Deputy Clerk.

*Return of Sheriff on Service of Subpena in a Criminal Action.*

Sheriff's office, }  
.... and county of ....., } ss.

I hereby certify, that I served the within subpena on the within-named witness ....., at the city and county of ....., on the .... day of .....,

18.., by showing the original to said witness, personally, and informing him of the contents thereof.

Sheriff of the .... and county of ....

By ..... ,

Deputy.

....., ..... 18..

*Affidavit as to Non-resident Witnesses.*

County court of the .... and county of .....

The people of the state of .....,  
against

}

State of .....,  
..... and county of .... } ss.

....., being duly sworn, deposes and says, that he is the district attorney in and for said .... and county; that above entitled cause is at issue and is set to be tried on the .... day of .... instant thereon; that .... is a necessary and material witness in the above cause, and resides and now is in ....., ..... county, in this state; that ..... is a necessary and material witness in above cause, and resides at or near ....., in the county of ..... or ....., in this state; that each and every of said witnesses is out of the city and county of .....; that the evidence of each and every of said witnesses is material on the trial of said cause on the part of the people, and that the attendance of such and every of said witnesses is material on the trial of said cause on the part of the people, and that the attendance of such and every of said witnesses at said trial, on the .... day of .... instant, is necessary; and further deponent says not.

Subscribed and sworn to before me, this .... day of ....., A.D. 18..

..... ,

County Clerk.

By ..... ,

Deputy.

*Order on the above Affidavit, to be Indorsed on the Subpena*

It satisfactorily appearing to me, upon an affidavit of ....., district attorney for the .... and county of ....., that the evidence of the within-named witness is material, and his attendance necessary at the trial, and that he resides out of said .... and county where the trial is to take place, it is ordered that the within-named witness attend at the time and place mentioned in the within subpena, in obedience to the commands thereof and of this order.

Dated ....., ..... 18..

County Judge of the .... and county of ....

*Order against Defaulting Witness, Subpenaed before the Grand Jury.*

County court of the .... and county of .... Term, 18...

....., ..... 18.., as yet of said .... term.

The grand jury came into court, and by their foreman represented to the court that ..... is a material witness in a proceeding before said grand



jury, and that having been served with a subpoena to attend before them, he had nevertheless neglected so to attend, and the said grand jury thereupon by their foreman ask for an attachment against said ..... And upon said application and due proof being filed of the facts stated therein and of the service of a subpoena upon said ..... and his failure to obey the same, it is ordered by the court that said ..... appear before said county court, at ten o'clock, A.M. on ....., and show cause why he should not be punished for contempt in disobeying said subpoena.

*Recognizance of Bail before Indictment.*

State of .....  
county of ..... } ss.

An order having been made on the .... day of .... A.D. 18..., by ...., justice of the peace of .... county [or, as the case may be], that ...., be held to answer upon a charge of [stating briefly the nature of the offense], upon which he has been duly admitted to bail, in the sum of ..... dollars, we, ..... and ..... [stating their place of residence], hereby undertake that the above-named ....., shall appear and answer the charge above-mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment and render himself in execution thereof, or if he fail to perform either of these conditions, that we will pay to the people of the state of California the sum of ..... dollars [inserting the sum in which the defendant is admitted to bail].

\*Witness, etc.

*Recognizance of Bail after Indictment.*

State of .....  
.... and county of .... } ss.

An indictment having been found, on the .... day of ....., A.D. 18..., in the county court of the city and county of ....., charging ..... with the crime of grand larceny, and he having been duly admitted to bail in the sum of one thousand dollars, we, ..... and ....., residents of ....., hereby undertake that the above-named ..... shall appear and answer the indictment above-mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and if convicted shall appear for judgment, and render himself in execution thereof, or if he fail to perform either of these conditions, that we will pay to the people of the state of California the sum of one thousand dollars.

.....  
.....

State of .....  
.... and county of .... } ss.

We do solemnly swear that we and each of us are worth the sum of one thousand dollars, the amount specified in the above recognizance, exclusive of property exempt from execution, and that we are householders [or, "free-holders"] and residents in said state.

.....  
.....

Sworn to before me, this .... day of ...., 18.. .....  
 County Judge.  
 [Indorsed] Approved this .... day of ...., 18.. .....  
 County Judge.

*Recognisance on a Recommitment.*

An order having been made on the .... day of .... A.D. 18.., by the court [naming it], that.... be admitted to bail in the sum of ... dollars, in an action pending in that court against him in behalf of the people of the state of ....., upon an [information, presentment, indictment or appeal, as the case may be], we, .... and ...., of [stating their places of residence], hereby undertake, that the above-named ....., shall appear in that or any other court in which his appearance may be lawfully required upon that [information, presentment, indictment or appeal, as the case may be], and shall at all times render himself amenable to its orders and processes, and appear for judgment and surrender himself in execution thereof; or if he fail to perform either of these conditions, that he will pay to the people of the state of ....., the sum of ..... dollars [inserting the sum in which the defendant is admitted to bail].

Witness our hand, etc.

*Form of Plea.*

The plea shall be entered in substantially the following form: 1st. If the defendant plead guilty, "the defendant pleads that he is guilty of the offense charged in this indictment." 2d. If he plead not guilty, "the defendant pleads that he is not guilty of the offense charged in this indictment." 3d. If he plead a formal acquittal or conviction, "the defendant pleads that he has already been convicted [or, "acquitted," as the case may be] of the offense charged in this indictment, by the judgment of the court of ....., [naming it], rendered at ..... [naming the place], on the .... day of ...."

*Order for Change of Place of Trial in County Court.*

County court of the county of .....

The people of the state of ..... }  
 against ..... }  
 ..... }

Application having been made by the defendant heretofore, to wit: on the .... day of ...., A.D. 18.., of the present ..... term, in open court, and in writing verified by the oath of the defendant and proof of service of a copy of said affidavit upon the district attorney, on the ..... day of ..... A.D. 18.., being filed, and said application being made on the ground that a fair and impartial trial cannot be had in this county, and praying that this action may be removed to the county of .... for trial, which matter was taken under advisement by the court, and the same having been duly considered, and the court being satisfied that the representation of the defendant is true, it is hereby ordered that this action be removed to the county court of ...., state of .....

And the said defendant being in custody, it is further ordered, that the sheriff of this county remove the said defendant to the custody of the sheriff of the county of .....

### *Forfeit of Bail—County Court.*

County Court of the ..... and .... county of ..... .... term, 18..

The people of the state of ..... }  
                        against         } Indictment for grand larceny.  
..... }

Upon motion of the district attorney, it was ordered, that the defendant, . . . . ., be called. And the said defendant having been thrice solemnly and duly called, failed and neglected to appear for trial. Whereupon, on motion of the district attorney, it was ordered that . . . . . and . . . . ., the bail of said . . . . ., be likewise called to produce the said . . . . . in court for trial; and the said . . . . . and . . . . . having been thrice duly and solemnly called to produce the said . . . . . for trial, and the said . . . . . still neglecting and failing to appear, and the said bail wholly neglecting and refusing to produce the said . . . . . for trial, upon motion of the district attorney, the court directed the following order to be entered, to wit :

The above-named defendant, ...., having been heretofore indicted for grand larceny, and duly admitted to bail in the sum of one thousand dollars, and the said ...., on the .... day of ....., A.D. 18.., having, without sufficient excuse, neglected to appear in court for trial, although the said ..... was thrice solemnly called to appear in court for trial, and although ..... and ....., the bail of said ....., were thrice solemnly called to produce ..... in court for trial, yet the said ..... neglected and refused to appear for trial, and the said bail neglected and refused to produce the said .... for trial:

Now, therefore, it is ordered by the court that the recognizance executed by the said ..... and ..... be, and the same is hereby, declared forfeited; and it is further ordered that the said ..... be arrested and committed to the custody of the sheriff of the ..... and county of ....., until legally discharged therefrom. It is further ordered, that the foregoing facts and order be entered on the minutes of this court.

### *Forfeit of Money Deposited as Bail.*

County court of the .... and county of ..... .... term, 18..

The people of the state of ..... }  
                        against                 } Indictment for grand larceny.  
..... indicted as ..... }

The above-named defendant, ...., indicted by the name of ...., having neglected to appear in court for the purpose of pleading, when his presence was lawfully required in court, although he was called to appear in court for the purpose of pleading to the indictment therein, in a loud and audible voice at the court-room door, and proclamation publicly made that, unless he appear, the money, to wit: fifteen hundred dollars, deposited in lieu of bail for that amount, would be forfeited, and the said .... still neglecting to appear in court: Now, therefore, it is ordered that the foregoing facts be entered in the minutes of the court, and that the said sum of fifteen hundred dollars deposited in lieu of bail be, and the same is hereby, declared forfeited.

And it is further ordered, that the said . . . . . be re-arrested by any sheriff, constable or policeman, within this state, and be committed to the custody of the sheriff of the . . . . and county of . . . . ., and that he be detained until legally discharged.

*Entry of Judgment on Conviction of Grand Larceny.*

In the county court of the . . . . . and county of . . . . ., State of . . . . ., . . . . term, A.D. 18..

Present, hon. . . . ., county judge.

The people of the state of . . . . .	}	Convicted of stealing property of.
against		
. . . . .		

The district attorney, with the defendant and his counsel, . . . . ., came into court. The defendant was duly informed by the court of the indictment found against him for the crime of stealing property of . . . . ., on the . . . day of . . . . ., 18.., of his arraignment and plea of "not guilty, as charged in the indictment," of his trial and the verdict of the jury, on the . . . day of . . . . ., 18..—"guilty, as charged in the indictment." The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him? To which he replies that he has none. And no sufficient cause being shown or appearing to the court, thereupon the court renders its judgment:

That, whereas, the said . . . . . having been duly convicted in this court of the crime of stealing property of . . . . . : It is therefore ordered, adjudged and decreed, that the said . . . . . be punished by imprisonment in the state prison of the state of . . . . . for the term of . . . years.

The defendant was then remanded to the custody of the sheriff of the said . . . . and county, to be by him delivered into the custody of the proper officers of said state prison.

Office of the county clerk of the . . . and county of . . . . .

I, . . . . ., county clerk of the . . . and county of . . . . ., and *ex officio* clerk of the county court thereof, do hereby certify the foregoing to be a true and correct copy of the judgment entered on the minutes of said county court of the . . . . and county of . . . . ., state of . . . . ., in the above-entitled cause.

Attest my hand and the seal of said county court, this' . . . . day of . . . . ., A.D. 18..

.....  
Clerk.

*Commitment.*

In the county court of the . . . . and county of . . . . ., state of . . . . .

The people of the state of . . . . . to the sheriff of the . . . . and county of . . . . ., and the warden and officers in charge of the state prison of the state of . . . . ., greeting :

Whereas, . . . . . having been duly convicted in our county court of the . . . . and county of . . . . ., of the crime of stealing property of . . . . ., and judgment having been pronounced against him, that he be punished by imprisonment in the state prison of the state of . . . . . for

the term of .... years. All of which appearing to us of record, and a certified copy of the judgment being indorsed hereon, and made a part hereof :

Now this is to command you, the said sheriff of the ..... and county of ....., to take and keep and safely deliver the said ..... into the custody of the said ....., or other officer in charge of the state prison of the state of ....., at your earliest convenience. And this is to command you, the said warden and other officers in charge of the state prison of the state of ....., to receive of and from the said sheriff of the ..... and county of ....., the said ....., convicted and sentenced as aforesaid, and him, the said ....., keep and imprison in the state prison of the state of ....., for the term of .... years. And these presents shall be your authority for the same. Herein fail not.

Witness : Hon. ...., county judge and judge of the said county court,  
at the court-house, in the .... and county of ....., this .... day of ....,  
A.D. 18..

Attest my hand and the seal of said court, the day and year last above written.

Clerk.

### *Trial of Issue of Insanity.*

County court of the .... and county of .....

The people of the state of ..... }  
against  
..... }

This case having been formerly tried, and the defendant having been convicted of burglary, and afterward, upon application founded upon affidavits on behalf of defendant, an issue of the insanity of defendant having been ordered to be tried by a jury, the defendant's counsel and the district attorney being now present in court ready to try said issue, a jury is now ready to be drawn.

And thereupon the following jurors having been called and examined as to their competency and duly accepted by the parties, who agree to go to trial with said jury, the said jurors are duly impaneled and sworn, the issues herein joined well and truly to try, to wit:

.....

.....  
....., etc.

And thereupon the evidence is proceeded with, and . . . . ., . . . . ., . . . . ., . . . . ., . . . . . and . . . . ., were duly called, sworn and examined, on the part of the defendant as witnesses to establish the insanity of defendant; and . . . . . was then called, sworn and examined, as a witness on the part of the people. And the evidence being closed on both sides, the case was submitted to the jury under the charge of the court; and the jury having retired for deliberation in charge of a sworn officer, returning into court after such deliberation, say by their foreman: "We find the defendant insane at the time of the committing of the burglary, and insane at the present time."

And said verdict having been duly recorded by the clerk, is read to the jury, who are asked by the clerk if the same is their verdict, to which all of said jurors duly assent.



case now pending in said court, then and there to be tried, between . . . . ., plaintiff and . . . . ., defendant, on the part of plaintiff. And for a failure to attend you will be deemed guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved.

Witness, hon. . . . ., county judge of the . . . . and county of . . . ., at the court-house in said . . . . and county, and the seal of said court, this . . . . day of . . . ., A.D. 18..

. . . . ., Clerk

By . . . . ., Deputy Clerk.

### *Order Confirming Mortgage Sale.*

In the district court of the . . . . judicial district, state of . . . . .

. . . . ., and others }  
against } . . . . and county of . . . . .  
. . . . . }

. . . . ., esq., sheriff of the . . . . and county of . . . . ., having filed his report of the sale of the mortgaged premises set forth and described in the final decree herein, by which it appears that said premises were duly sold, and produced the net sum of . . . . thousand and . . . . hundred and . . . . dollars and . . . . cents, which has been applied in part satisfaction of said mortgage debt, leaving the sum of . . . . thousand and . . . . dollars and . . . . cents unpaid and unsatisfied, and now due and payable by said defendant . . . . . to . . . . . and others: Now, on motion of said plaintiffs by their attorneys, . . . . and . . . ., it is ordered that said report and all things and matters therein contained do stand ratified and confirmed.

. . . . ., 18..

### *Order for Execution for Deficiency on Mortgage Sale.*

. . . . . district court, }  
against }  
. . . . . }

On reading and filing report of sale herein, by which it appears that there is a deficiency due the plaintiff herein, after applying the proceeds of sale of the property described in decree herein, the sum of \$. . . . ., with interest thereon at the rate of . . . . per cent. per month, from the . . . . day of . . . ., 18., until paid. On motion of . . . . ., attorney for plaintiff, ordered that said report of sale be and the same is hereby confirmed, and the said plaintiff . . . . ., have judgment and execution against said defendant, . . . . ., for said sum of \$. . . . ., with interest thereon at the rate of . . . . per cent. per month, from said . . . . day of . . . ., 18., until paid.

### *Writ of Venditioni Exponas.*

State of . . . . ., county of . . . .

The people of the state of . . . . ., to the sheriff of . . . . ., greeting :

Whereas, heretofore we issued our writ of execution to you, directed in the words and figures following, to wit : [here copy in full the execution, omitting the return under which the sheriff made the sale of . . . . ., 18. .] and you on the . . . . day of . . . ., 18., made your return to the said writ,

by which return it appears that you levied on the real estate described as follows [here insert description thereof as in the levy]: which real estate so levied on by you under said writ remained unsold for want of buyers.

Therefore, we command you that you sell, or cause to be sold, the real estate by you taken as aforesaid, and every part thereof, for the best price that can be obtained for the same, or so much thereof as may be sufficient to satisfy the said judgment, and make return of your proceedings herein within thirty days after the receipt of this writ by you.

Witness, the hon. ...., judge of the district court of the .... judicial district, in and for ..... county, and the seal of said court, this .... day of ....., A.D. 18..

.....,  
Clerk.

*Order for Writ of Assistance.*

State of .....,  
city and county of .....

In the district court of the .... judicial district.

.....  
against  
.....

On reading and filing the affidavit of ...., setting forth that he was the purchaser of the premises described in the complaint herein, that he has presented to the defendant .... the sheriff's deed for said property, and demanded possession thereof, and that said ..... has refused to deliver to him possession of said premises, and it appearing that due notice has been given of this notice to Messrs. .... & ...., the attorneys of said defendant: Now, on motion of ...., .... and ...., on behalf of said ....., it is ordered that a writ of assistance issue to the sheriff of ... county, to put the said .... in possession of the said premises, and him in possession thereof from time to time to maintain and defend.

*Writ of Assistance.*

In the district court of the .... judicial district of the state of ....., in and for the .... and county of .....

.....  
against  
.....

The people of the state of ..... to the sheriff of the .... and county of ....., send greeting:

Whereas, by a certain decree or judgment of our district court of the .... judicial district, in a certain cause there pending, between ...., plaintiff, and ...., defendant, made at a district court of the .... judicial district, held at the ....., in the .... and county of ....., on the .... day of ....., in the year one thousand eight hundred and ....., in and for the .... and county of ....., before the honorable ...., judge of the .... judicial district, it was, among other things therein contained, ordered, adjudged and decreed, by the said court, that the purchaser at the sale therein described should, on the production of the sheriff's deed for said premises, be forthwith put in possession of a certain piece or parcel of land



situate in the said city and county, and therein described as follows, to wit [here insert description]:

And whereas, the time for redemption having expired, and the said sheriff's deed duly executed and delivered to . . . . ., who was the purchaser at said sale, yet the said . . . . . has not been let into nor taken possession of the said piece of land or any part thereof, according to the tenor of the said decree; and whereas, the said piece of land is in the tenure and occupation of said . . . . .; and whereas, by an order of said district court of the . . . . . judicial district, made in the same cause on the . . . . day of . . . ., 18.., it was ordered that our writ of assistance should issue to you, the said sheriff, to put the said . . . . . in possession of the said piece or parcel of land, and him in possession thereof from time to time to maintain and defend.

Therefore, we command you, that immediately after receiving this writ you go to and enter upon the said piece or parcel of land, and that you eject and remove therefrom all and every person or persons holding or detaining the same, or any part thereof, against the said . . . . .; and that you put and place the said . . . . . or his assigns in the full, peaceable and quiet, possession of the said piece or parcel of land without delay; and him, the said . . . . ., in such possession thereof from time to time to maintain, keep and defend, or cause to be kept, maintained or defended, according to the tenor and true intent of the said decree and order of the said court.

Witness, hon. . . . ., judge of the . . . . judicial district, at the . . . . ., in the . . . . and county of . . . . ., and the seal of said court, this . . . . day of . . . ., A.D. 18..

[L.S.]

. . . . .,  
Clerk.  
By . . . . .,  
Deputy Clerk

*Writ of Execution.*

State of . . . . .,  
. . . . and county of . . . . }

In the district court of the . . . . judicial district.

The people of the state of . . . . . to the sheriff of the . . . . and county of . . . . ., greeting:

Whereas, on the . . . . day of . . . ., A.D. 18.., . . . . ., plaintiff, recovered a judgment in the district court of the . . . . judicial district, against . . . . ., for the sum of . . . . . dollars damages, with interest thereon at the rate of . . . . per cent. per annum till paid, together with his costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of . . . . hundred and . . . . dollars, as appears to us of record.

And whereas, the judgment roll in the action in which said judgment was entered, is filed in the clerk's office of said court, in the . . . . ., in said . . . . and county of . . . . ., and the said judgment was docketed in said clerk's office, in said . . . . and county, on the . . . . day of . . . ., 18.., and the sum of . . . . hundred and . . . . dollars, with interest as aforesaid, is now (at the date of this writ) actually due on said judgment.

Now, you, the said sheriff, are hereby required to make the said sum of said . . . . dollars damages, with interest as aforesaid, and said sum of . . . .

hundred and ..... dollars of costs, to satisfy the said judgment, out of the personal property of the said debtor, ...., in your county; and if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to said ....., on the .... day of ....., 18.. (the day whereon.....said judgment was docketed..... your county), or at any time thereafter; and to have those moneys before our said court, at the clerk's office of said court, at the ....., in the .... and county aforesaid, on the .... day of ....., A.D. 18.., to render unto the said ...., plaintiff, in satisfaction for the damages, interest and costs aforesaid: and have you then there this writ with a return under your hand of what you have done thereunder.

Witness, hon. ...., judge of our district court of the ..... judicial district, at the ..... in the said ..... and county, this .... day of ....., A.D. 18..

Attest my hand and the seal of said court, the day and year last above written.

[L.S.]

.....,  
Clerk.

*Order for Removal of Cause to United States Court.*

In the district court of the .... judicial district of the state of ....., in and for the county of .....

..... }  
against  
..... }

Upon reading and filing the petition of ... .., the defendant in the above-entitled action, and upon finding the bond and sureties offered by him, the said defendant in the premises, good and sufficient, and the same being by me, the judge of said district court, duly accepted, it is hereby ordered that no further proceedings be had in this cause, and the removal of the same to the circuit court of the United States for the district of ....., to be held in and for the northern district of ....., be and the same is hereby allowed and ordered, in accordance with the aforesaid petition and the statute of the United States in such case made and provided.

Dated, ....., 18..

*Certificate to Transcript on Appeal to the Supreme Court.*

State of .....,  
.... and county of .... } ss.

..... }  
against  
..... }

Clerk's office of the district court of the .... judicial district.

I, ....., clerk of the district court of the .... judicial district, do hereby certify, that the foregoing complaint, amended answer, judgment, settled statement and notice of appeal, are true and correct copies of the original papers on file in my office, and of the order of trial entered in the minutes of said court, and that the same constitute the transcript or appeal from the judgment made and entered on the .... day of ....., A.D. 18.., in favor of said plaintiff and against said defendant.

I do further certify, that the undertaking on appeal has been duly filed according to law.

In witness whereof, I have hereunto set my hand and seal of said district court of ..... judicial district, this ..... day of ....., 18..

[L.S.]

.....,  
Clerk.  
By .....  
Deputy Clerk.

*Certificate of Official Character.*

State of ....., }  
.... and county of .... } ss.

I, ....., clerk of the county court of the .... and county of ...., state of ....., do hereby certify, that ....., whose genuine signature is affixed to the foregoing certificate, was at the time of signing the same, and still is ..... of the city and county of ....., duly authorized by law to take such acknowledgment or to administer such oath and certify the same [or, "to make such certificate "], and that full faith and credit are due to all his official acts.

Witness my hand and the seal of said county court, this .... day of ...., A.D. 18..

[L.S.]

.....,  
Clerk.  
By .....  
Deputy Clerk.

## COURTS OF JUSTICE.

**Courts of Justice.**—The following are the courts of justice of California :

- 1st. The supreme court.
- 2d. The district courts.
- 3d. The county courts.
- 4th. The probate courts.
- 5th. The justices' courts.
- 6th. The police and other inferior municipal courts.

**Courts of Record.**—The supreme court, the several district courts, the several county courts and the several probate courts, of this state, are courts of record.

**Public Sitzings.**—The sittings of every court of justice shall be public, except as is provided below.

**In Divorce Cases.**—In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private ; and upon such directions all persons may be ex-

cluded, except the officers of the court, the parties, their witnesses and counsel.

**General Powers of Courts.**—Every court has power:

1st. To preserve and enforce order in its immediate presence.

2d. To enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority.

3d. To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court, in an action or proceeding pending therein.

4th. To control, in furtherance of justice, the conduct of its ministerial officers.

**When a Judge shall not Act.**—A judge shall not act as such in any of the following cases:

1st. In an action or proceeding to which he is a party or in which he is interested.

2d. When he is related to either party, by consanguinity or affinity within the third degree, computed according to the rules of the civil law.

3d. When he has been attorney or counsel for either party in the action or proceeding. But this shall not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the cause to another county.

**Judge not to act as Counsel.**—A judge shall not act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for review, or in an action or proceeding from which an appeal may lie to his own court.

**Same.**—A judge of the supreme court or of the district court, shall not act as attorney or counsel in any court of this state, except in an action or proceeding to which he is a party on the record. No judge or other elective judicial officer or district court commissioner, shall have a partner acting as attorney or counsel in any court of this state.

**Leave of Absence.**—The legislature shall have no power to grant leave of absence to a judicial officer; and any such officer who shall willfully absent himself from the state for upwards of thirty consecutive days, shall be deemed to have forfeited his office.

**Judicial Days.**—The courts of justice may be held and judicial business may be transacted on any day, except on non-judicial days.

**Non-judicial Days.**—No court shall be opened, nor shall any judicial business be transacted, on Sunday, on New Year's day, on the Fourth of July, on Christmas day, on Thanksgiving day, or on a day on which the general election or judicial election is held, except for the following purposes :

1st. To give, upon their request, instructions to a jury when deliberating on their verdict.

2d. To receive a verdict or discharge a jury.

3d. For the exercise of the powers of a magistrate in a proceeding of a criminal nature.

**When Courts are to be Held.**—Every court of justice, except a justice's, police or other inferior municipal court, shall sit at the county seat of the county in which it is held. Justices' courts shall be held in their respective townships or cities, and police and other inferior municipal courts, in their respective cities or towns.

**Jurisdiction of Supreme Court.**—The supreme court shall have appellate jurisdiction in all cases in equity ; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars ; also, in all cases arising in the probate courts ; and also in all criminal cases amounting to felony, on questions of law alone. The court shall also have power to issue writs of *mandamus*, *certiorari*, prohibition and *habeas corpus*, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each

of the justices shall have power to issue writs of *habeas corpus* to any part of the state, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any district court or any county court in the state, or before any judge of said courts.

**Reviews.**—The supreme court shall have jurisdiction to review, upon appeal :

1st. A final judgment in any of the foregoing cases; and to review upon the appeal from such judgment any intermediate order or decision involving the merits and necessarily affecting the judgment.

2d. An order granting or refusing a new trial ; an order granting or dissolving an injunction, and an order refusing to grant or dissolve an injunction; an order dissolving or refusing to dissolve an attachment ; any special order made after final judgment, and such order or judgment in actions for partition as determines the rights of the respective parties and directs partition or sale to be made.

**New Trial.**—The supreme court may reverse, affirm or modify, the judgment or order appealed from, as to any or all of the parties, and may, if necessary or proper, direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had.

**Jurisdiction of District Courts.**—The district courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars ; and also in all criminal cases not otherwise provided for. The district courts and their judges shall have power to issue writs of *habeas corpus* on petition by or on behalf of any person held in actual custody in their respective districts.

**Jurisdiction of County Courts.**—The county court shall have original civil jurisdiction :

- 1st. Of actions of forcible entry and detainer.
- 2d. Of proceedings in cases of insolvency.
- 3d. Of actions to prevent or abate a nuisance.
- 4th. Of all such special cases and proceedings as are not otherwise provided for.

**Same.**—The county court shall also have jurisdiction :

1st. To inquire, by the intervention of a grand jury, of all public offenses committed or triable in their respective counties.

2d. To try and determine all indictments found therein, for all public offenses, except treason, misprision of treason, murder and manslaughter.

**Jurisdiction of Probate Court.**—The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them to probate ; to grant letters testamentary, of administration and of guardianship, and to revoke the same for cause shown according to law ; to compel executors, administrators and guardians, to render an account, when required, or at the period fixed by law ; to order the sale of property of estates or belonging to minors ; to order the payment of debts due by estates ; to order and regulate all partitions of property or estates of deceased persons ; to compel the attendance of witnesses ; to appoint appraisers or arbitrators ; to compel the production of title deeds, papers or other property, of an estate or of a minor ; and to make such other orders as may be necessary and proper in the exercise of the jurisdiction conferred upon the probate court.

**Jurisdiction of Justices' Courts.**—These courts have jurisdiction, within their respective townships or cities, of the following actions or proceedings :

1st. Of an action arising upon contract for the recovery of money only, if the sum claimed exclusive of interest is less than three hundred dollars.

2d. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injury to

personal property, if the damages claimed are less than three hundred dollars.

3d. Of an action for a fine, penalty or forfeiture, in a sum less than three hundred dollars, given by statute or the ordinance of an incorporated city or town.

4th. Of an action on a bond or undertaking conditioned for the payment of money, in a sum less than three hundred dollars, though the penalty exceed three hundred dollars; the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

5th. Of an action to recover possession of personal property, when the value of such property is less than three hundred dollars.

6th. To take and enter judgment on the confession of a defendant, when the amount confessed is less than three hundred dollars, exclusive of interest.

7th. Of proceedings respecting vagrancy and disorderly persons.

Justices' courts shall have no jurisdiction in a civil action where the title or right of possession of real property shall necessarily come in question.

The jurisdiction of justices' courts within an incorporated city shall extend to the limits of such city or township in which the city is situated. Mesne and final process of justices' courts may be issued to any part of the county in which they are held.

These courts shall have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1st. Petit larceny.

2d. Assault and battery not charged to have been committed upon a public officer in the discharge of his duties or with intent to kill.

3d. Breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable



by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment.

There shall be no terms in justices' courts. These courts shall always be open.

#### IDAHO.

**Judicial Power of Territory.**—The judicial power of the territory is vested in a supreme court, district courts, probate courts and in justices of the peace.

**Jurisdiction of Supreme Court.**—The supreme court has appellate jurisdiction in all civil cases where the amount in dispute exceeds in value one hundred dollars, and in all criminal cases tried in district courts.

**Jurisdiction of District Courts.**—The district courts have original jurisdiction in all civil cases where the amount in dispute exceeds one hundred dollars, and in all criminal cases not otherwise provided for. Their appellate jurisdiction extends to hearing upon appeal, on order or judgment of a probate court or justice of the peace, in cases prescribed by statute.

**Jurisdiction of Probate Courts.**—Their jurisdiction is the same as in California—which see. In addition they have further jurisdiction, concurrent with the district courts of an action to enforce the liens of mechanics and others, and in all civil actions when the amount in controversy shall not exceed eight hundred dollars; and concurrent jurisdiction with courts of justice of the peace in all cases; and the same rules of practice shall be observed before the probate courts as those governing the practice before justices' courts. The court and judge has power at chambers to try and determine writs of *mandamus*, *certiorari* and *quo warranto*, and to issue all writs necessary or proper to the complete exercise of the powers conferred upon it by law.

**Jurisdiction of Justices' Courts.**—Justices' courts shall have jurisdiction of the following actions and proceedings:

- 1st. Of an action arising on contracts for the recovery of

money only, if the sum claimed, exclusive of interest, does not exceed one hundred dollars.

2d. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed one hundred dollars.

3d. Of an action for a fine, penalty or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city.

4th. Of an action upon a bond conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due; when the payments are to be made by installments, an action may be brought for each installment as it becomes due.

5th. Of an action upon a surety, bond or undertaking, taken by them though the penalty exceed, if the amount claimed does not exceed one hundred dollars.

6th. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on real or personal property, when the debt secured does not exceed, exclusive of interest, one hundred dollars.

7th. Of an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars.

8th. To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed one hundred dollars.

9th. Of an action for a forcible or unlawful entry upon, or a forcible or unlawful detention of, lands, tenements or other possession.

10th. Of an action to determine the right of a mining claim, and for damages for injury to the same, when the damages claimed do not exceed one hundred dollars.

11th. Of proceedings respecting vagrants and disorderly persons.

They have no jurisdiction where the title to real property is in question. They also have jurisdiction in the following cases:

1st. Petit larceny.

2d. Assault and battery not charged to have been committed upon a public officer in the discharge of his duties or with intent to kill.

3d. For drawing and exhibiting deadly weapons in the presence of two or more persons, in a rude and angry and threatening manner.

4th. Breaches of the peace, riots, affrays, committing a willful injury to property; and all misdemeanors, punishable by fine, not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

**When Open.**—Justices' courts are always open.

**Disqualification of Judges, and Prohibitions.**—[The same as in California, which see.]

**Judicial Days.**—[The same as in California, except Washington's birth-day is a non-judicial day.]

**General Powers of Courts.**—[The same as in California.]

#### NEVADA.

**Courts of Justice.**—The judicial power of the state of Nevada is vested in a supreme court, district courts and in justices of the peace.

**Jurisdiction of Supreme Court.**—The supreme court has appellate jurisdiction in all cases in equity, also in all cases in law in which is involved the title or right of possession to, or the right of possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fines, or in which the demand, exclusive of interest or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivision of law and equity, and also on questions of law alone, in all criminal cases in which the offense charged amounts to a felony. The court also

has power to issue writs of *mandamus*, *certiorari*, prohibition, *quo warranto*, and *habeas corpus*, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.

**Jurisdiction of District Courts.**—The district courts have original jurisdiction in all cases in equity; also in all cases at law, which involve the title or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, exceeds three hundred dollars; also in all cases relating to the estates of deceased persons and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer; and also in all criminal cases not otherwise provided by law. They also have final appellate jurisdiction in cases arising in justices' courts, and such other inferior tribunals as may be established by law. The courts and judges also have power to issue writs of *mandamus*, injunction, *quo warranto*, *certiorari* and all other writs proper and necessary to the complete exercise of their jurisdiction. They also have power to issue writs of *habeas corpus*, on petition by or on behalf of any person held in actual custody in their respective districts.

**Jurisdiction of Justices' Courts**—Justices' courts have jurisdiction in the following actions and proceedings:

1st. Of an action arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed three hundred dollars.

2d. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed three hundred dollars.

3d. Of an action for a fine, penalty or forfeiture, not exceeding three hundred dollars, given by statute or the ordinance of any incorporated or unincorporated town, city or village.

4th. Of an action upon a bond conditioned for the payment of money, not exceeding three hundred dollars, though the penalty exceed that sum, the judgment to be given for the actual sum due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

5th. Of an action upon a surety bond or undertaking, though the penalty exceed, if the amount claimed does not exceed three hundred dollars.

6th. Of an action to recover the possession of personal property when the value of such property does not exceed three hundred dollars.

7th. To take and enter judgment on the confession of a defendant when the amount confessed does not exceed three hundred dollars.

8th. Of actions for the possession of lands and tenements where the relation of landlord and tenant exists.

9th. Of actions where the possession of lands and tenements has been unlawfully or fraudulently obtained or withheld, in which case the proceedings shall be as prescribed by the acts upon that subject.

10th. Of proceedings respecting vagrants and disorderly persons.

11th. Of suits for the collection of taxes when the amount of the tax sued for does not exceed three hundred dollars.

**The Jurisdiction** conferred by this section shall not extend to a civil action in which the title to mining claims or questions as to boundaries to lands are involved, or to actions to enforce mechanic's liens; and, if questions of title to real property be involved, cases involving such questions shall be sent to the district court of the district for trial.

**Justices' Courts** shall always be open.

**Disqualification of Judges and Prohibitions.**—[The same as in California, which see.]

**Judicial Days.**—[The same as in California, except Washington's birthday, which is a non-judicial day.]

**General Powers of Courts.**—[The same as in California.]

## COVENANT.

**Covenant.**—An agreement between two or more persons, entered into by deed, whereby one of the parties promises the performance or non-performance of certain acts. See AGREEMENTS and CONTRACTS.

**Covenants of Warranty** are agreements of assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.

The form in common use is as follows (See CONVEYANCING):

*Form of Covenant.*

And I, the said . . . . ., for myself, my heirs, executors and administrators, do covenant with the said . . . . ., his heirs and assigns, that I will, and my heirs, executors and administrators, *warrant* and *defend* the same to the said . . . . ., his heirs and assigns, forever, against the lawful claims and demands of all persons [or, "of all persons claiming by, through or under, me, but against none other", or other special covenant, as the case may be].

## COVERTURE.

**Coverture.**—The condition or state of a married woman. During coverture the civil existence of a wife is, for many purposes, merged in that of her husband. See HUSBAND AND WIFE.

## CREDITOR.

**Creditor.**—He who has a right to require the fulfillment of a contract or obligation.

**Preferred Creditors** are those who, in consequence of some provision of law, are entitled to preference in the payment of debts. See EXECUTORS AND ADMINISTRATORS, subdivision—"Payment of Debts"—as to who are preferred creditors.

## CRIMES AND PUNISHMENTS.

## CALIFORNIA, NEVADA AND IDAHO.

**Crime Defined.**—A crime or public offense is an act or omission forbidden by law, and to which is annexed either of the following punishments:

1st. Death.

2d. Imprisonment.

3d. Fine.

4th. Removal from office.

5th. Disqualification to hold or enjoy any office of honor, trust or profit, under this state.

**Division of Public Offenses.**—Public offenses are divided into :

1st. Felonies.

2d. Misdemeanors.

**Felony.**—A felony is a public offense punishable by death, or imprisonment in a state prison.

**Misdemeanor.**—Every other public offense is a misdemeanor.

**Legal Conviction.**—No person can be punished for a public offense, except upon legal conviction in a court having jurisdiction thereof.

**Mode of Proceeding.**—Every public offense must be prosecuted by indictment, except :

1st. When proceedings are had for the removal of civil officers of the state.

2d. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace.

3d. Offenses tried in justices', recorders' and mayors' courts.

**Criminal Action.**—The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, shall be known as a criminal action.

**Prosecutions.**—A criminal action shall be prosecuted in the name of the people of the state of California [Nevada and Idaho] as a party against the party charged with the offense.

**Defendant.**—The party prosecuted in a criminal action is designated in criminal proceedings as the defendant.

**Rights of Defendant.**—In a criminal action, the defendant is entitled:

1st. To a speedy and public trial.

2d. To be allowed counsel as in civil actions, or he may appear and defend in person or with counsel.

3d. To produce witnesses on his behalf; and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and testimony there taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has either in person or by counsel cross-examined or had an opportunity to cross-examine the witness; the deposition of such witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found within the state.

**Second Prosecution.**—No person shall be subject to a second prosecution for a public offense for which he had once been prosecuted and duly convicted or acquitted.

**Witness against One's Self, Etc.**—No person shall be compelled, in a criminal action, to be a witness against himself, nor shall a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

**Requisites of Legal Conviction.**—No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty or upon a judgment against him upon a demurrer to the indictment in the case.



**PREVENTION OF PUBLIC OFFENSES.** See, also, **MAGISTRATE.**

**Lawful Resistance.**—Lawful resistance to the commission of a public offense may be made:

1st. By the party about to be injured.

2d. By other parties.

**The Party about to be Injured.**—Resistance sufficient to prevent the offense may be made by the party about to be injured:

1st. To prevent an offense against his person or his family, or some member thereof.

2d. To prevent an illegal attempt by force, to take or injure property in his lawful possession.

**By Other Persons.**—Any other person in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

**Essence of Crime.**—In every crime there must be a union or joint operation of act and intention or criminal negligence.

**Intent.**—Intention is manifested by the circumstances connected with the perpetration of the offense and the sound mind and discretion of the accused.

**Sound Mind.**—A person shall be considered of sound mind, who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age if such person knew the distinction between good and evil.

**Infants.**—An infant, under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown.

**Idiots.**—An idiot shall not be found guilty or punished for any crime with which he or she may be charged.

**Counseling Infants, Etc.**—Any person counseling, advising or encouraging, an infant, under the age of fourteen years, a lunatic or idiot, to commit any offense, shall be prosecuted for such offense, when committed, as principal,

and if found guilty shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging, as aforesaid, had he or she committed the offense directly without the intervention of such idiot, lunatic or infant.

**Married Woman.**—A married woman, acting under the threats, command or coercion, of her husband, shall not be found guilty of any crime not punishable with death: *provided*, it appear from all the facts and circumstances of the case, that violent threats, command or coercion, were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would have otherwise been inflicted on the wife if she had been found guilty.

**Drunkenness no Excuse.**—Drunkenness shall not be an excuse for any crime, unless such drunkenness shall be occasioned by the fraud, contrivance or force, of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness for such malignant purpose shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they, had been possessed of sound reason and discretion.

**Misfortune and Accident.**—All acts committed by misfortune or accident, shall not be deemed criminal when it satisfactorily appears that there was no evil design or intention or culpable negligence.

**Duress by Threats or Menaces.**—A person committing a crime not punishable with death, under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe and did believe that his or her life was in danger, shall not be found guilty, and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

**ACCESSORIES IN CRIME.**

**Accessories.**—An accessory, is he or she who stands by and aids, abets or assists, or who not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of a crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal and punished accordingly.

**Accessories after the Fact.**—An accessory after the fact, is a person who after full knowledge that a crime has been committed, conceals it from the magistrate or harbors and protects the person charged with or found guilty of the crime. The punishment, if found guilty, is by imprisonment for any term not exceeding two years and fined in a sum not exceeding five thousand dollars, to be regulated by the circumstances of the offense and the enormity of the crime.

**WITNESSES.**

**Party Injured.**—The party injured and the defendant may be witnesses ; and when two or more persons are concerned in the commission of a crime, one may be sworn as a witness against the other. Such evidence shall not be used against the party testifying. [In Idaho and Nevada, any person may be compelled to testify.]

**Indians, Mongols and Chinese,** shall not be permitted to give evidence for or against any white person. [In Idaho, a person having one-eighth or more negro blood is a negro, and one-half Indian blood is an Indian, and neither can testify, as above provided. In Nevada, same as in California.]

**Affirmation.**—The solemn affirmation by a witness shall be sufficient, and false affirmation is perjury.

**CRIMES AGAINST THE GOVERNMENT AND PEOPLE.**

**Crimes against Government.**—Crimes against the government and people shall consist in treason and misprision of treason, and can be committed only by persons owing allegiance to the state.

**Treason.**—Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. Two witnesses are necessary to convict, and the punishment is death.

**Misprision of Treason.**—Misprision of treason shall consist in the knowledge and concealment of treason without otherwise assenting to or participating in the crime. The punishment is by imprisonment, not to exceed five years, in the state prison. [Not applicable to Idaho.]

#### OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

**Murder.**—Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

**Express Malice.**—Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

**Implied Malice.**—Malice shall be implied where no considerable provocation appears or where all the circumstances of the killing show an abandoned and malignant heart. All murders which shall be perpetrated by means of poison, lying in wait, torture or by any other kind of willful, deliberate and premeditated, killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder in the first degree, and all other kinds of murder shall be deemed murder in the second degree. The jury in their verdict shall say whether the offense be murder in the first or second degree. Murder in the first degree is punishable by death, and in the second degree by imprisonment in the state prison not less than ten years, and which may extend to life.

**Manslaughter.**—Manslaughter is the unlawful killing of a human being, without malice express or implied, or without any mixture of deliberation. It must be voluntarily

upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection.

**Voluntary Manslaughter.**—In cases of voluntary manslaughter, there must be a serious and highly-provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person or an attempt by the person killed to commit a serious personal injury on the person killing.

**Irresistible Passion.**—The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible, for if there should appear to have been an interval between the assault or provocation given sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

**Involuntary Manslaughter.**—Involuntary manslaughter consists in the killing of a human being without any intent so to do.

**Punishment.**—Every person convicted of the crime of manslaughter, shall be punished by imprisonment in the state prison for a term not exceeding ten years.

**Death.**—In order to make the killing either murder or manslaughter, the party injured must die within a year and a day after the stroke received or cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned as the first.

**Justifiable Homicide.**—Justifiable homicide is the killing of a human being in necessary self-defense or in defense of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a felony, or against any person or persons who manifestly intend or endeavor, in a violent, riotous or tumultuous, manner to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

**Self-defense.**—If a person kill another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant, and that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

**Killing by Officer.**—If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified: *provided*, such officer or person, previous to the killing, shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

**Unavoidable Necessity.**—Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who puts a person to death in virtue of a judgment of a competent court must proceed according to the sentence and the law of the land.

**Homicide by Misadventure.**—Excusable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another: as where a man is at work with an ax and the head flies off and kills a by-stander, or a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal.

**Analogous Cases.**—All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

**Burden of Proof.**—The killing being proved, the burden of proving circumstances in mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution shows the same.

**Concealing Death of Bastard.**—If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year: *provided*, however, that nothing herein contained shall be construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

#### DUELING.

**Fighting Duel.**—If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small sword or other dangerous weapon, and in so doing shall kill his antagonist or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be punished, upon conviction thereof, by imprisonment in the state prison for any term not exceeding seven years, nor less than one year. [In Idaho and Nevada the punishment is death.]

**Posting for not Fighting.**—If any person shall post another, or in writing or printing shall use any reproachful or contemptuous language to or concerning another not fighting a duel or for not sending or accepting a challenge, he shall be imprisoned in the county jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars. [In Idaho the same fine, but not more than one year's imprisonment. In Nevada the same as California, except imprisonment not less than six months, nor more than one year.]

**Payment of Debts, Etc.**—If any duel shall be fought, contrary to the foregoing provisions, and one of the parties

die within one year from any wound received in such duel, the survivor shall be chargeable with the debts of the deceased; and no action can be maintained, or proceedings had against his estate, until the survivor pays the debts or is prosecuted to insolvency. The creditors of the deceased may sue the survivor for their demands, and need only prove the debt and the fact that defendant killed deceased in a duel. If one of the parties be wounded, the expense of his sickness and the support of his family are made legal charges on his antagonist. If the party die within one year, the survivor shall pay to the heirs of deceased the sum of ten thousand dollars, to be recovered in a civil action. [Applicable to California alone.]

**Fighting out of State.**—If any inhabitant of this state shall, by any previous appointment or agreement, fight a duel out of this state, and from wounds so received his antagonist shall die within this state, the jurisdiction of the offense shall be in the county where the death shall happen. [Applicable to California alone.]

**Officers Neglecting to Prevent Duels.**—If any officer, bound to preserve the public peace, shall have knowledge of an intention on the part of two or more persons to fight a duel with any deadly weapon, and such officer shall not exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined in a sum not exceeding one thousand dollars. [Not applicable to Nevada.]

**Abortion.**—Every person who shall administer, or cause to be administered or taken or shall take any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure abortion or miscarriage, of any woman then being with child, and any woman who shall knowingly cause to be used upon herself, or consent to the use of such instrument upon herself, with the intent to procure abortion or miscarriage when with child, and shall be thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than two years, nor more than five years: *provided*, that no physician shall be affected by the last clause of this



section, who, in the discharge of his professional duties, deems it necessary to procure abortion or miscarriage, of any woman, in order to save life; nor shall any woman be affected by said last clause when her physician deems it necessary to have said abortion or miscarriage produced, in order to save her life; nor shall such physician or surgeon be arrested, indicted or put on trial or convicted, by the testimony of such woman alone. [Same in Idaho, except as to testimony of woman. In Nevada the punishment is not less than ten years, and may extend to life imprisonment.]

**Mayhem.**—Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. Punishment by imprisonment in the state prison not to exceed fourteen years.

**Rape.**—Rape is the carnal knowledge of a female, forcibly and against her will. Punishment, not less than five years in the state prison, and which may extend to life. Any person of the age of fourteen years and upwards, who shall have carnal knowledge of a female child, under the age of ten years, either with or without her consent, shall be adjudged guilty of rape, and punished as above provided. [In Idaho and Nevada, the same, except the age is twelve years.]

**Crime Against Nature.**—The infamous crime against nature, either with man or beast, is punished by imprisonment in the state prison not less than five years, and which may extend to life.

**Assault, and Assault and Battery.**—[See those heads.]

**Assault with Intent to Commit Felony.**—An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery or grand larceny, shall subject the offender to imprisonment in the state prison not less than one nor more than fourteen years.

**False Imprisonment.**—False imprisonment is an unlawful violation of the personal liberty of another, and consists

in confinement or detention without sufficient legal authority. The punishment is by fine, not exceeding five thousand dollars, or imprisonment in the county jail for a term not exceeding one year.

#### ABDUCTION.

**Abduction—Kidnapping.**—Kidnapping is the forcible abduction or stealing away of a man, woman or child, from his or her own country and sending or taking him or her unto another.

**Every person** who shall forcibly steal, take or arrest, any man, woman or child, whether white, black or colored, or any Indian in this state, and carry him or her into another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this state, without having established a claim, according to the laws of the United States, shall upon conviction be deemed guilty of kidnapping, and be punished by imprisonment in the state prison for any term not less than one nor more than ten years for each person kidnapped or attempted to be kidnapped.

**Abduction of Woman.**—Every person who shall take any woman unlawfully, against her will and by force, menace or duress, compel her to marry him or to marry any other person or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the state prison for a term not less than two nor more than fourteen years. [Same in Idaho and Nevada, and in addition the record of conviction operates as a divorce.]

**Abduction of Children.**—Every person who shall maliciously, forcibly or fraudulently, lead, take or carry away, or decoy or entice away, any child under the age of ten years, with intent to detain and conceal such child from its parent, guardian or other person, having the lawful charge of such child, shall upon conviction thereof be punished by imprisonment in the state prison, not exceeding ten years or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

**BURGLARY.**

**Burglary.**—Every person who shall in the night time forcibly break and enter or without force enter (the doors and windows being open), any house, room, apartment or tenement, or any tent, vessel or water-craft, with intent to commit grand or petit larceny or any felony, shall be deemed to be guilty of burglary, and on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than ten years

**OFFENSES AGAINST PROPERTY.**

**Robbery.**—Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Punishment, not less than one year in the state prison and which may extend to life. [Same in Idaho, except not less than five years.]

**Grand Larceny.**—Grand larceny is stealing personal property of the value of fifty dollars or more. Punishment, not less than one nor more than fourteen years in the state prison. [Same in Idaho and Nevada.]

**Petit Larceny.**—Petit larceny is stealing personal property under the value of fifty dollars. Punishment, not more than six months in the county jail or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

**Receiving Stolen Goods.**—To buy or receive stolen goods knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years or by fine not exceeding one thousand dollars. [Same in Idaho, except the judgment may be both fine and imprisonment.]

**Stolen Property Restored.**—All property that has been stolen shall be restored to the owner, and no sale of the same shall be good against the owner.

**Altering Brands.**—Altering brands on any animals, the property of another, with intent to steal the same, or to prevent identification thereof by the owner, on conviction thereof, the offender shall be punished by imprisonment in

the state prison for a term not less than one nor more than five years. [Same in Idaho, except imprisonment not less than six months.]

**Embezzlement by Officers.**—Every servant, officer or person, employed in any public department or station of this state or county in the state, or in any office of a corporate body, who shall embezzle, steal or secrete, any money or goods, the property of such state, county or corporation, on conviction thereof, shall be punished in the state prison not less than one nor more than ten years.

**Officers Failing to Pay Over Money.**—Any public officer failing to pay over to the proper custodian any public moneys whatever, unless prevented by unavoidable accident, on conviction thereof shall be imprisoned in the state prison not less than one nor more than ten years.

**Destroying Deeds.**—Every person who shall fraudulently or maliciously tear, burn, efface, cut or in any other way, destroy any deed, lease, bond, will or any other writing sealed, or any bank bill, note or check, warrant or certificate, for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatever, with intent to defraud, prejudice or injure, any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the state prison for a term not less than one year nor more than five years. [In Idaho same, except imprisonment is not more than two years, when the sum not paid over amounts to more than one hundred dollars.]

**Removing Monuments.**—Maliciously removing or altering any monument erected for the purpose of designating the boundary of any tract of land, is a misdemeanor, and punishable by fine not more than one thousand dollars, or

by imprisonment in the county jail not less than one month nor more than one year. [Same in Idaho, except not more than six months' imprisonment.]

**Embezzlement by Clerk.**—Any clerk, apprentice, servant, or agent, to whom any money, or goods, or chattels or property, shall be intrusted by his master or employer, in the course of his employment, who shall withdraw himself from such master or employer, and go away with said goods, with intent to steal the same, shall be guilty of embezzlement, and, on conviction, shall be punished as provided by law for feloniously stealing property of the article so taken, embezzled or converted.

**Bailee's Conversion.**—If any bailee of money, goods or property, shall convert the same to his own use, with the intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of money or value of the goods, etc., so converted, in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished accordingly. See BAILMENT.

**Lodgers Removing Furniture.**—If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods or chattels, which he is to use in or with his lodgings, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punished accordingly.

#### FORGERY AND COUNTERFEITING.

**Forgery.**—To falsely make, alter, forge or counterfeit, any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, and, in short, to feloniously forge anything whatever, with intent to obtain money or property, is punishable, on conviction, by imprisonment in the state prison for a term not less than one nor more than fourteen years.

**Counterfeiting Coin.**—Counterfeiting gold or silver coin, current in this state, or possessing or giving in payment the same with intention to defraud, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

**Possessing or Receiving Counterfeit Coin.**—Having in one's possession or receiving for any other person any counterfeit gold or silver coin, current in this state, with intent to defraud any person or body corporate, knowing the same to be counterfeit, on conviction, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

**Possessing or Receiving Forged Notes, Etc.**—Having in one's possession or receiving forged bills or notes, with intent to utter them, knowing the same to be forged and with intent to defraud any person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

**Making or Possessing Counterfeit Dies or Plates.**—Making or knowingly having in one's possession any die, plates apparatus, paper, metals, machine or other thing whatever, made use of in counterfeiting the coin now current or hereafter to be made current in this state, or in counterfeiting bank notes or bills, is punishable upon conviction, not less than one nor more than fourteen years, and all such dies, plates, etc., shall be destroyed.

**Forging Seal of State, Etc.**—Fraudulently forging the seal of this state or of any officer of the state or counties, and making use of the same, or counterfeiting the signature of any public officer, or unlawfully and corruptly affixing any true seal to any commission or other writing, or having the same in one's possession concealed, knowing it to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

#### CRIMES AGAINST PUBLIC JUSTICE.

**Perjury and Subornation of.**—Every person having taken a lawful oath or made affirmation in any judicial proceeding

or in any other matter, where by law an oath or affirmation is required, who shall swear or affirm willfully, corruptly and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof shall be imprisoned in the state prison for any term not less than one nor more than fourteen years.

**Procuring Execution of Innocent Person.**—Every person who by willful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death.

#### BRIBERY OF OFFICERS.

**Bribery.**—If any person shall, directly or indirectly, give any sums of money or other bribe, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present, reward or any other thing, to corruptly obtain or to procure the opinion, judgment or decree, of any judge or justice of the peace acting without this state, or to corruptly induce or influence any such judge or justice of the peace to be more favorable to one side than the other in any suit, action, proceeding, matter or cause depending or to be brought before any such judge or justice of the peace; or shall, directly or indirectly, give away any sum or sums of money, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present or reward or any other thing, to corruptly obtain, procure or influence, any member or officer of the legislature, or to corruptly incline, induce or influence, any such officer or member of the legislature to be more favorable to one side or the other of any question, election, matter or thing, pending or to be brought before the legislature or either house thereof; or shall, directly or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present

or reward or other thing, to corruptly obtain, procure or influence, any member or officer of any legislative caucus, political convention, committee, primary election or political gathering, of any kind, held for the purpose of nominating candidate or candidates for any office or offices of honor, trust or profit, in this state, or of any common council, board of supervisors or board of trustees, of any city or corporation; or to corruptly incline, induce or influence, any member or officer of any such caucus, convention, committee, common council, board of supervisors or board of trustees, to be more favorable to one candidate than another candidate, before, or to be brought before, such caucus, convention, committee, common council, board of supervisors or board of trustees; or shall directly or indirectly give any sum or sums of money, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present or reward or other thing, to corruptly obtain, procure, induce or influence, any member or officer of any common council of any city, or any member or officer of any board of supervisors of any county, or board of trustees of any city or corporation, to be more favorable to one side than to the other, of any question, matter or thing, pending, or to be brought before such common council, board of supervisors or board of trustees, the person or persons so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid; and the judge, justice of the peace, member or officer of the legislature, caucus, convention, committee, common council, board of supervisors or any board of trustees of any city or corporation, who shall accept or receive the same, shall be deemed guilty of bribery, and, on conviction thereof, shall be imprisoned in the state prison for a term not less than one year nor more than fourteen, and shall be disqualified from holding any office of honor, trust or profit, in this state. [Same in Idaho, except the imprisonment not more than ten years. In Nevada, same as California, except not less than one year's imprisonment.]



**Same—other Officers.**—It is the same offense to bribe, or attempt to bribe, any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district or county attorney, member of the legislature or other officer, ministerial or judicial, with intent to induce or influence such person to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required with partiality or favor, or to appoint any person to office. The punishment is imprisonment in the state prison not less than one year nor more than ten years, and shall be disqualified to hold any office of honor, trust or profit, in this State. See BRIBERY.

**Proposing or Offering to Bribe.**—Proposing or offering to bribe any of the persons or officers above-mentioned, is punishable by fine not exceeding five thousand dollars, or imprisonment in the state prison for a term not to exceed fourteen years, or be punished by both such fine and imprisonment, and shall be disqualified from holding any office of honor, trust or profit, in this state.

#### STEALING, ALTERING OR DEFACING RECORDS, ETC.

**Stealing or Defacing Records, Etc.**—If any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify or avoid, any record process, or any proceeding, paper or document, whatever, belonging to any public office within this state, the person so offending and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than one nor more than ten years and be fined in a sum not exceeding five thousand dollars.

#### MISCELLANEOUS OFFENSES.

**Inhumanity to Prisoners.**—Every sheriff who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

**Refusing to Deliver Records.**—If any officer who has resigned, been removed or whose term of office has expired,

shall willfully and unlawfully refuse to deliver to his successor all documents or records belonging to his office, on conviction thereof shall be imprisoned in the state prison not less than one year nor more than ten years. [In Idaho, the imprisonment shall not exceed two years and the fine five thousand dollars.]

**Personating Another.**—Falsely representing or personating another, and in such assumed character marrying another, becoming bail, confessing judgment, making acknowledgments, or doing any act in a suit or proceeding to the injury of any person so misrepresented, is punishable by imprisonment in the county jail not exceeding two years or by fine not exceeding five thousand dollars. [In Idaho and Nevada, the punishment is by imprisonment in the state prison not less than one nor more than two years, or by fine not exceeding five thousand dollars.]

**Personating another to Receive Money.**—Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description, intended to be delivered to the person so personated shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

**Resisting Officers.**—If any person shall knowingly and willfully obstruct or resist any officer or person duly authorized in serving or attempting to serve any law process or order of any court, or any legal process whatsoever, or in making or attempting to make any arrests, or shall assault or beat such officer or person, for having done or attempted so to do, he shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail for any term not exceeding five years: *provided*, any officer or person whatsoever, who may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do shall, on conviction, suffer the same punishment. [In Idaho and Nevada, the punishment is by imprisonment not less than one year in the territorial prison.]

**Rescuing Convicts.**—Rescuing or setting at liberty any person convicted of a crime, the punishment of which is death, is punishable by imprisonment in the state prison not less than one year nor more than fourteen years. If the person so set at liberty or rescued shall have been found guilty of a crime the punishment of which is imprisonment in the state prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

**Rescuing Persons charged with Crime.**—Rescuing or setting at liberty, before conviction, any person who stands charged with any capital offense or any crime punishable in the state prison, is punishable by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. If the person so rescued or set at liberty stands charged with any offense punishable by fine or imprisonment or both, the person so rescuing or liberating shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty.

**Officers Suffering Prisoner to Escape.**—Any sheriff, jailer or guard, who fraudulently or voluntarily suffers the escape of any convict in custody, shall, on conviction, be punished by imprisonment in the state prison for a term not exceeding ten years, and fined in a sum not exceeding ten thousand dollars. [In Idaho, the imprisonment is not less than one nor more than five years, and the fine not to exceed five thousand dollars.]

**Carrying Convicts Instruments to Aid Escape.**—Carrying any tool or weapon to a convict, in prison, to enable such convict to escape or aiding any escape, is punishable by fine not exceeding five thousand dollars and imprisonment in the state prison not exceeding five years.

**Rescue of Person Arrested on Civil Process.**—If any person shall rescue another in legal custody on civil process, he shall, on conviction, be fined in any sum not exceeding one thousand dollars. [In Idaho and Nevada, the imprison-

ment is not less than one nor more than five years, and not more than five thousand dollars.]

**Suffering Escape of Prisoner before Conviction.**—Voluntarily suffering a prisoner to escape, or to go at large, before conviction, is punishable by fine not exceeding five thousand dollars and imprisonment in the county jail not exceeding five years. If the prisoner so escaping or suffered to go at large, be in custody charged with murder or other capital offense, then the punishment is by imprisonment in the state prison not less than one nor more than ten years. [In Idaho and Nevada, the fine is not less than one nor more than five thousand dollars and imprisonment not more than five years.]

**Officers Refusing to Receive or Arrest.**—If any officer shall willfully refuse to receive or arrest any person charged with a criminal offense, he shall, on conviction, be fined in any sum not exceeding five thousand dollars and imprisoned in the county jail not exceeding five years.

**Compounding and Compromising Offenses.**—Every person having a knowledge of the commission of a public offense, who shall take money or any reward, upon any agreement to compound or conceal any offense, or to abstain from any prosecution therefor, or to withhold evidence, shall, upon conviction, be fined in any sum not exceeding five hundred dollars or imprisoned in the county jail not more than six months. This does not apply to those offenses which may lawfully be compromised by leave of the court.\*

If the party injured appear before the court and acknowledge in writing that he has received satisfaction for the injury, the court may, on the payment of costs, order

\* When a defendant is held to answer on a charge of misdemeanor, for which the person injured has a remedy by a civil action, the offense may be compromised, except when it is committed :

1st. By or upon any officer of justice while in the execution of the duties of his office.

2d. Riotously.

3d. With an intent to commit felony.

all proceeding to be stayed upon the prosecution, and the defendant discharged. When so compromised, there can be no other prosecution for the same offense. Offenses cannot be compromised, except as above provided. See **COMPROMISE**.

**Conspiracy.**—If two or more persons conspire either to commit any offense or to cheat or defraud any person of any property, or to commit any act injurious to the public health, to public morals or to trade or commerce, they shall, on conviction, be punished by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars. [In Idaho and Nevada, the imprisonment is not more than six months.]

**Personating Officers.**—If any person shall take upon himself to exercise or officiate in any office in the place of another, in this state, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars.

**Embracery.**—Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money and the like. The punishment is by fine not exceeding five thousand dollars or by imprisonment in the state prison not exceeding five years, and also disqualifies the party from ever acting as juror. [In Idaho, the punishment is imprisonment not more than six months and fine not more than five thousand dollars.]

**Extortion.**—If any officer of this state shall willfully or corruptly take any fee or reward to do or exercise his duty as such officer, except such as is allowed by law; or if such officer shall willfully or corruptly ask or demand, as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, upon conviction, he shall be fined in any sum not exceeding two hundred dollars. [In Idaho, the fine is not more than one thousand dollars and removal from office. Nevada same as California, except the fine is not more than one thousand dollars.]

**Justice or Constable Purchasing Judgment.**—If any justice of the peace or constable, of the same township, shall directly or indirectly purchase any judgment or part thereof on the docket of such justice or any docket in his possession, he shall, upon conviction thereof, be fined for each offense, in any sum not less than one hundred nor more than one thousand dollars. [In Idaho, the fine is not more than five hundred dollars.]

**Corrupt Grant of Authority.**—Any officer exercising any office, who shall for any reward grant to another the right to discharge the duties of such office, on conviction, shall be fined not exceeding five thousand dollars and shall forfeit his office.

**Threatening Letters.**—If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of any crime or misdemeanor, or to expose or publish any of his infirmities or failures, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill or murder, or to destroy his house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his infirmities, though no money, goods, chattels or valuable thing, be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars and imprisoned in the county jail not exceeding six months.

**Opening Letters of Others.**—If any person shall willfully open or read or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it shall be addressed, and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding five thousand dollars. [In Idaho, the fine is not more than one thousand dollars.]

**CRIMES AGAINST THE PUBLIC PEACE AND TRANQUILITY.**

**Disturbing the Peace in the Night Time.**—Maliciously and willfully disturbing the public peace or quiet of any neighborhood, at late or unusual hours of the night, by loud or unusual noises or by offensive conduct, challenging to fight or fighting, is punishable by fine not exceeding two hundred dollars or imprisonment in the county jail not more than two months.

**Refusing to Disperse.**—If two or more persons assemble for the purpose of disturbing the peace or doing any unlawful act, and do not disperse on being desired or commanded so to do by any public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars and imprisoned in the county jail not more than six months.

**Affray.**—If two or more persons shall, by agreement, fight in public, on conviction, they shall be punished by fine not exceeding two hundred dollars and imprisoned in the county jail not more than one month. [In Idaho, the imprisonment is not more than three months.]

**Unlawful Assembly.**—If two or more persons shall assemble to do an unlawful act, such persons shall be guilty of an unlawful assembly, and, upon conviction, shall be severally fined in a sum not exceeding two hundred dollars or imprisoned in the county jail not exceeding three months.

**Routs and Riots.**—If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of rout, and, upon conviction, shall be severally fined in any sum not exceeding five hundred dollars or imprisoned in the county jail not more than six months; and if two or more persons shall actually do any unlawful act of violence, either with or without a common cause of quarrel, or even do a lawful act in a violent, tumultuous and illegal, manner, shall be deemed guilty of a riot, and, upon conviction, fined in any sum not exceeding five hundred dollars each or

imprisoned in the county jail not exceeding six months or by both such fine and imprisonment.

**Disturbing Religious Assemblies.**—Willfully disquieting or disturbing any congregation or assembly of people, met for religious worship, by making a noise or by rude behavior, is punishable by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding three months.

**Selling Liquor at Camp-meeting.**—Erecting a booth or tent or other contrivance, for the purpose of selling or disposing of wines or liquors, or selling the same within a mile of any camp-meeting for religious purposes, is punishable by fine not less than five nor more than five hundred dollars. This does not affect stores or saloons established previously to the appointment of such religious meeting.

**Libel.**—See LIBEL.

#### OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE.

**Bigamy.**—Bigamy consists of having two wives or two husbands at one and the same time, knowing the former husband or wife is still alive. If any person or persons within this state, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by fine not exceeding two thousand dollars and be imprisoned in the state prison not more than three years. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of such second marriage divorced by lawful authority from the bonds of such former marriage, or to any person when the former marriage hath been by lawful authority declared void. [In Idaho and Nevada, the punishment is



by imprisonment not less than one nor more than five years and one thousand dollars fine.]

**Marrying a Husband or Wife.**—If any man or woman, being unmarried, shall knowingly marry the husband or wife of any other, such man or woman shall, on conviction, be fined not less than two thousand dollars or imprisoned in the state prison not more than three years. [Same punishment as in bigamy, in Idaho and Nevada.]

**Adultery and Incest.**—Persons being within the degrees of consanguinity,\* within which marriages are declared by law to be incestuous and void, who shall intermarry with each other or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the state prison not less than ten years. [In Idaho and Nevada, imprisonment not less than one year.]

**Public Nuisance.**—See NUISANCE.

**Selling Unwholesome Provisions.**—Selling any flesh of any diseased animal or other unwholesome provisions or any poisonous or adulterated drink or liquors, is punishable by fine of not more than five hundred dollars or imprisonment in the county jail not more than six months.

**Destroying Official Posters.**—Intentionally defacing, obliterating or tearing down, any proclamation, advertisement or notification, set up at any place in this state by authority of any law of the United States or of this state or of any court, is punishable by fine of not more than one hundred nor less than twenty dollars or imprisonment in the county jail not more than one month. This does not apply to such proclamations, etc., as have expired.

**Possession of Burglarious Instruments.**—If any person shall be found having upon him any picklock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any building containing valuable property, or shall be found in any such place with intent to steal, shall, on conviction, be imprisoned in the county jail not more

\* See MARRIAGE—DIVORCE and HUSBAND AND WIFE.

than two years. [In Idaho and Nevada, the fine is not more than one hundred dollars and not more than three months imprisonment.]

**Possession of Offensive Weapons.**—If any person shall have upon him any offensive weapon with intent to assault any person, on conviction, he shall be fined not more than one hundred dollars or imprisoned in the county jail not more than three months.

**Refusing to aid Officers.**—Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus* or power of the county, by refusing to aid and assist in taking, or arresting any person against whom there may be issued any process or who may have escaped, or by refusing to aid and assist in preventing a breach of the peace or the commission of any criminal offense, being required by any officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars. [In Idaho, the fine is not less than fifty nor more than five hundred dollars and imprisonment for thirty days.]

#### CHEATS, SWINDLES AND FRAUDS.

**Fraudulent Conveyances.**—All and every person who shall be a party to any fraudulent conveyance of lands or goods, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay, creditors or others of their just debts, damages or demands, or who being parties aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify or defend, the same or any of them as true and done, had or made, in good faith or upon good considerations, or shall alien, assign, or sell, any of the lands, hereditaments, goods, chattels or other thing beforementioned, to him, her or them, conveyed as aforesaid or any part thereof, he, she or they, so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars. [In Idaho and Nevada, the punishment is additional imprisonment not less than six months.]

**Swindling.**—If any person, by false representations of his own wealth or mercantile correspondence and connections, shall obtain any credit thereby, and defraud any person of money, goods, chattels or any valuable thing, or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtain credit, and thereby fraudulently get possession of goods, wares or merchandise or other valuable thing, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than six months.

**Cheating and False Pretenses.**—If any person shall knowingly and designedly, by any false pretense, obtain from any person any valuable thing, with intent to cheat or defraud such person of the same, on conviction, he shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year, and be sentenced to restore the property so fraudulently obtained, if it can be done. [In Idaho and Nevada, imprisonment not to exceed six months.]

**Selling Land Twice.**—If any person after once selling, bartering or disposing, of any tract of land, shall fraudulently and knowingly sell the same a second time, or make any agreement to sell or dispose of the same for a valuable consideration, on conviction, he shall be punished by imprisonment in the state prison not less than one nor more than ten years. [In Idaho and Nevada, imprisonment is not to exceed five years.]

**False Weights and Measures.**—If any person shall knowingly sell any goods, wares or merchandise, or any valuable thing, by false weights or measures, or shall knowingly use any false measures at any mill in taking toll for grinding corn or grain, on conviction, shall be fined not exceeding two hundred dollars and imprisoned in the county jail not more than three months. [In Idaho and Nevada, imprisonment is not to exceed six months.]

**Frauds against Creditors.**—If any debtor shall fraudulently remove his property or effects out of this state, or shall fraudulently convey, sell, or assign or conceal, his property or effects, with intent to defraud, hinder or delay, his creditors of their just rights, claims or demands, on conviction, he shall be imprisoned in the county jail not exceeding one year, or fined not exceeding five thousand dollars, or by both such fine or imprisonment. [In Idaho and Nevada, imprisonment is not to exceed six months.]

**Same.**—Any person against whom an action is pending or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal, sell or dispose of, such property or effects, with intent to hinder or defraud the person bringing such action or recovering such judgment, or shall remove such property beyond the limits of the county in which it may be at the time of the commencement of the action or the rendering of such judgment, shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [In Idaho and Nevada, imprisonment not to exceed six months.]

#### MALICIOUS MISCHIEF.

**Poisoning Cattle.**—Willfully administering poison to cattle or maliciously exposing the same, with the intent that the same shall be taken by any cattle, is punishable by imprisonment in the county jail not exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

**Malicious injury to Animals.**—Maliciously killing or wounding any horse or domestic animal belonging to another, or maliciously or cruelly beating or torturing such animal, whether belonging to himself or another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**Malicious Injury to Goods.**—Willfully, unlawfully and maliciously, destroying, burning, cutting or otherwise injuring, property of any description belonging to another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [In Idaho, the fine is not to exceed two hundred dollars.]

**Malicious Injury to Houses.**—Willfully, maliciously and unlawfully, breaking, destroying or injuring, the door or window of any dwelling-house, shop, store or other house or building, or severing therefrom or from any gate, fence or inclosure or any part thereof or any material of which it is formed, or severing from the freehold any produce thereof or anything attached thereto, or pulling down or destroying any gate, post, railing or fence or any part thereof, or cutting down, tapping, girdling or otherwise injuring or destroying, any fruit or ornamental or shade tree, being the property of another, is punishable by fine not exceeding two hundred dollars, or imprisonment in the county jail not exceeding three months. [In Idaho and Nevada, the imprisonment is not to exceed six months.]

**Injury to Lumber or Water-craft.**—Willfully and maliciously burning, injuring or destroying, any pile or raft of wood, plank, boards or other lumber, or cutting loose or setting adrift any such raft, or cutting, breaking, injuring, sinking or setting adrift, any vessel or water-craft, being the property of another, is punishable by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

**Malicious Injury to Bridges, Canals, Etc.**—Maliciously injuring any mill, dam or other structure, erected to create hydraulic power, or to drain any swamp or overflowed land, or to conduct water for mining, manufacturing, reclaiming or agricultural purposes, or any embankment necessary to the same, or making any aperture in the same with the intent to injure the same, is punishable by fine not exceeding one thousand dollars, or imprisonment at

hard labor in the state prison not more than two years, or by both such fine and imprisonment.

**Willful Injury to Jails.**—Willfully and intentionally breaking down or injuring any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, *nor less than the value of said jail or other place of confinement so destroyed*, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the state prison not exceeding five years. [In Idaho and Nevada, the imprisonment not to be less than one year.]

**Willfully Setting Fire to any Wood, Grass, Etc.**—Willfully and intentionally or negligently and carelessly setting fire to any wood, prairie, grass or other lands or grounds, in this state, is punishable by fine not less than two nor more than one thousand dollars, or imprisonment in the county jail not less than ten days nor more than six months, or by both such fine and imprisonment in the discretion of the jury trying the case: *provided*, that this shall not extend to any person who shall set on fire any wood, prairie, grass or other lands, adjoining their own farm, house, plantation or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, or her or their, neighbors reasonable notice of such intention. [In Idaho and Nevada, the fine is not less than one nor more than five hundred dollars.]

#### GENERAL PROVISIONS.

**Common-law Misdemeanors and Punishments.**—Every offense not defined by statute which is a misdemeanor at common law, is a misdemeanor in this state. Every offense or act which by law is declared to be a misdemeanor, and for which no punishment is specially provided, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Applicable to California alone.]

**Effect of Sentence to State Prison.**—A sentence of imprisonment in the state prison for a term less than life, sus-

pendes all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority and power ; and the person sentenced to such imprisonment for life, shall thereafter be deemed civilly dead.

**Persons, Females and Intent.**—Where the term “person” is used, it includes within its meaning all states, territories or governments, and all counties or corporations, and the United States.

**The Provisions** of all criminal law extend to females as well as males.

**Where the Intent** to injure, defraud or cheat, is required to be shown in order to constitute an offense, it is sufficient if such intent be to injure, defraud or injure, the United States, this state or any other state, territory or county, or the government or any public office thereof, or any county, city or town, or any corporation, body politic or private individual.

#### COUNTERFEITING LABELS AND STAMPS.

**Counterfeiting Labels and Stamps.**—Knowingly and willfully forging or counterfeiting, or causing to be forged or counterfeited, upon goods or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud, is punishable by imprisonment in the county jail not exceeding six months, or by fine not less than three nor more than six hundred dollars.

**Selling Goods with Counterfeit Stamps and Labels.**—Selling any goods, wares and merchandise, having any such forged and counterfeited stamps or labels, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not less than three nor more than six hundred dollars.

#### POISONING SPRINGS.

**Poisoning Springs.**—Every person who shall willfully poison any spring, well or reservoir, of water shall, upon

conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than ten years.

#### OFFENSES AGAINST HABITATIONS, ETC.

**Arson—First Degree.**—Willfully and maliciously burning or causing to be burned, in the night-time, any dwelling-house in which there shall be at the time some human being, shall be deemed arson in the first degree. Any person convicted thereof shall be punished by imprisonment not less than two years, and which may extend to life, in the state prison.

**Arson—Second Degree.**—Willfully and maliciously burning or causing to be burned, any dwelling-house the property of another, in the day-time, or in the night or day-time willfully burn or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse or other building, or stack or stacks of grain, or standing crops, the property of any other person or corporation, or any church, meeting-house, school-house, state-house, court-house or other public building, or any ship, vessel, boat or other water craft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this state, such person so offending shall be deemed guilty of arson in the second degree, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of such burning, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

**Dwelling-house.**—Every house, prison, jail or other edifice, which shall have been usually occupied by persons lodging there at night, shall be deemed a dwelling-house of any person so lodging therein; but no warehouse, barn, shed or other outhouse, unless used as a dormitory, shall be deemed a dwelling-house or part thereof, within the meaning of the two preceding sections, unless the same be joined to and immediately connected with a dwelling-house.



**Burning Insured Property.**—Every person who shall willfully burn or cause to be burned, any building, ship, vessel or other water-craft, or any goods, wares, merchandise or other chattel, which shall be at the time insured against damage or loss by fire, with intent to injure or defraud such insurer, whether the same be the property of such person or of any other, shall, upon conviction, be adjudged guilty of arson in the second degree and punished accordingly.

#### REBEL FLAGS AND DEVICES.

**Exposure of Rebel Flags or Devices.**—Exposing to public view, on his own premises or elsewhere, any flag or device of the description used or reputed to be used by any rebels against the authority of this state or of the United States, or by any public enemies of this state or of the United States, is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

**Such Flag, Etc., a Nuisance.**—Such flag or device so exhibited is a nuisance, and any constable of the township in which the same shall be so exhibited, or the sheriff or deputy or any peace officer, taking sufficient assistance therefor, may seize and destroy the same. [Applicable to California alone.]

#### BRIBERY OF WITNESS

**Bribing or Hindering Witness.**—Every person who shall, directly or indirectly, give or offer to give any sum or sums of money or other bribe, present or reward, to procure the absence of any person who is or may become a witness, from any trial of any issue in any action or proceeding in this state, and every person who shall, by any means, willfully hinder or prevent any person who is or may become a witness, from attending any trial in any court in this state; and every such person who shall willfully absent himself or agree or offer to absent himself, in consideration of money or anything, shall, on conviction thereof, be fined not ex-

ceeding five thousand dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

#### HOUSEBREAKING IN DAY-TIME.

**Breaking or Entering Into Houses in Day-time.**—If any person shall, in the day-time, break and enter into any dwelling-house, shop, warehouse, store, mill, barn, stable, out-house or other building, or willfully and maliciously, by day, without breaking enter the same, with intent to steal or to commit any felony whatever therein, every such person, upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than five years.

#### COUNTERFEITING GOLD.

**Counterfeiting Uncoined Gold.**—Counterfeiting any species of gold dust, bars, bullion or lumps of gold, of any description whatsoever uncoined, or knowingly selling the same or making any instrument to be used in so counterfeiting, knowing the use to which it is to be put, or knowingly having in one's possession and secretly keeping any instrument for the purpose of so counterfeiting, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

**Possessing or Receiving Counterfeit Gold.**—Knowingly having in possession or receiving counterfeit gold, with the intent to sell or utter the same, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

#### INJURIOUS PUBLICATIONS.

**Publication of Abortionist Advertisements.**—Knowingly advertising, printing, publishing or circulating or causing the same to be done, any pamphlet, printed paper, book, newspaper notice, advertisement or reference, containing words or language giving or conveying any notice, hint or reference, to any person or to the name of any person, or any house, place, shop or office, where any drug,

preparation or thing, or any instrument or means whatever, or any advice or knowledge, may be obtained for the purpose of causing or procuring the miscarriage or premature delivery of any woman pregnant with child, is punishable by imprisonment in the state prison not less than three nor more than ten years. [Applicable to California alone.]

#### IMPROPER USE OF DEADLY WEAPONS.

**Exhibiting or Using Deadly Weapons.**—Any person who shall, in the presence of two or more persons, draw or exhibit any deadly weapon in a rude, angry and threatening, manner, not in necessary self-defense, or who shall unlawfully use the same in any fight or quarrel, on conviction, shall be fined in any sum not less than one nor more than five hundred dollars, or imprisoned in the county jail not less than one nor more than six months, or by both such fine and imprisonment, with the costs of prosecution.

**Duty of Courts and Officers.**—It is the duty of officers, courts and grand juries, to carry this law into full effect; and it is the duty of judges to give this law in charge to the grand juries at each term of their respective courts.

#### STEALING OF DOGS.

**Stealing Dogs.**—Every person who shall feloniously steal, take and carry, lead or drive, away, any dog, either of the male or female kind, belonging to another, on conviction, shall be punished by imprisonment in the county jail not more than six months, or by fine not less than twenty nor more than one hundred dollars, or by both such fine and imprisonment.

[The following, in relation to "Crimes and Punishments," is applicable to California alone.]

#### DANCE-HOUSE AND HURDY-GURDY GIRLS.

**Employing Girls to Dance for Hire.**—Employing any female child under the age of seventeen years, to dance or exhibit herself for hire, drink or gain, in any drinking saloon, dance cellar or any place whatever (theater excepted), where two or more persons are assembled together,

is punishable by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding three months.

**Every such female child**, under the age of seventeen years, so offending, is punishable by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one month, or by both such fine and imprisonment.

**Employing Girls to play Musical Instruments for Hire.**—Causing or procuring any such child to play for hire, drink or gain, on any musical instrument in any drinking saloon or in any place whatever, where two or more persons are assembled together, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months; and every such child so offending, on conviction, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both such fine and imprisonment.

**Misdemeanor and Penalty.**—Every act or offense, not defined by statute, which is a misdemeanor at common law, is a misdemeanor in this state. Every offense or act which is a misdemeanor, and for which no punishment is specially provided, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

**Stealing Animals.**—Feloniously stealing, taking and carrying away, any horse, mare, gelding, colt, cow, steer, bull, calf, mule, jack or jenny, the property of another, *without respect to value*, is grand larceny, and punishable by imprisonment in the state prison not less than one nor more than fourteen years.

### GAME.

**Killing of Certain Game.**—It is unlawful to take, kill or destroy any of the following game within the time hereinafter specified, namely: quail, partridges or grouse, mallard duck, wood duck, teal duck and spoon-bill duck, and all other broad-bill ducks, shall not be taken, killed or destroyed between the fifteenth day of March and the fifteenth day of September in each year; *provided*, that in the counties of San Bernardino and Los Angeles the taking, killing, or destroying of any of the birds or game above enumerated shall be lawful at any time between the first day of August and the first day of April of each year, and at no other time; and, *provided further*, that in the counties of Sierra, Plumas and Lassen, the taking, killing or destroying any of the birds or game above enumerated, except quails, partridges and grouse, shall be lawful at any time between the fifteenth day of August and the fifteenth day of March of each year, and at no other time.

**Elk, Deer and Antelope.**—It is unlawful to take, kill or destroy, the male or female of any elk, deer or antelope, between the first day of January and the first day of July, of each year.

**Penalty.**—To have any of the aforesaid game in one's possession during the time when the killing is prohibited, is punishable by fine of twenty-five dollars for every such duck, grouse or animal aforesaid, so in possession. The person offending may be also fined not over five hundred dollars, and imprisoned not more than thirty days in the county jail, or by both such fine and imprisonment.

GENERAL SUMMARY OF CRIMES NOT IN THE ACT CONCERNING.  
BUT FOUND IN OTHER LAWS.

**Crimes not before Specified.**—To inflict cruel and unusual punishments; to adulterate liquors or food; to employ female waiters where liquors are sold; to entice apprentices away; to issue and circulate paper money of any state bank; to injure signals or monuments of United States coast survey; to injure, willfully, railroads or plank or turnpike roads; to tamper with gas pipes; to tamper with pipes of water company; to injure telegraph line or cable; to vote more than once at one election; to keep or deal game of chance for money; to moor vessel to buoys; to throw ballast in a harbor; to obstruct channels of Humboldt Bay; to keep house of ill-fame; to import convicts into this state; to tamper with juror or juror-box; to injure levees around swamp land; to maintain a lottery; to alter marks or brands of cattle; to obstruct navigable streams; to injure or destroy willfully files of newspapers in the recorders' office; to interfere wrongfully with oyster-beds; to use phosphorus in certain counties to exterminate vermin in fields, to wit: Santa Clara, Contra Costa, San Joaquin, Santa Cruz and San Mateo; to violate revenue or road laws; to kill sea lions at Point Lobos; to entice seamen to desert.

OREGON.

**Bigamy.**—If any person having a former husband or wife living, shall marry another person, or live or cohabit with another person as husband or wife, such person shall be deemed guilty of polygamy, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than four years, or by imprisonment in the county jail not less than six months nor more than one year, or by fine not less than three hundred nor more than one thousand dollars.

The preceding Section shall not extend to or apply to any person whose husband or wife shall have voluntarily withdrawn and remained absent from such person for the period of seven years together—the party marrying again

not knowing the other to be living within that time, nor to any person legally divorced from the bonds of matrimony.

**Adultery.**—If any person shall commit the crime of adultery, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than two hundred nor more than one thousand dollars.

**A Prosecution** for the crime of adultery shall not be commenced, except upon the complaint of the husband or wife, and within one year from the time of committing the crime or the time when the same shall come to the knowledge of such husband or wife. When the crime of adultery is committed, between a married woman and an unmarried man, the man shall be deemed guilty of adultery also and be punished accordingly.

**If any Man or Woman**, not being married to each other, shall lewdly or lasciviously cohabit or associate together, such man or woman, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one nor more than six months, or by fine not less than fifty nor more than three hundred dollars.

**Producing Abortion.**—If any person shall administer to any woman pregnant with a child, any medicine, drug or substance, whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter.

**Burning House in Night-time.**—If any person shall, willfully and maliciously, burn in the night-time any dwelling-house of another, or shall, in the night-time, willfully or maliciously set fire to any building owned by himself or another, by the burning whereof any dwelling-house of another shall be burned in the night-time, such person shall

be deemed guilty of arson, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than ten nor more than twenty years.

#### DUELING.

**Sec. 9, Art. II,** of the constitution of the state of Oregon is substantially the same as the constitution of California, on the subject of dueling.

**Statutory Provisions.**—If any person shall, by previous appointment, fight a duel within the jurisdiction of Oregon, and, in doing so, inflict a wound upon another whereof the person so injured shall die, such person shall be deemed guilty of murder in the second degree. [The punishment for murder in the second degree is by imprisonment for life.]

**If any Person** engage in a duel or send a challenge to fight one, although no killing ensue, such person shall be imprisoned in the penitentiary not less than one nor more than ten years.

**If any Person** accept a challenge to fight a duel or knowingly carry a challenge to fight one—although no duel be fought—or shall be present as aid, second or surgeon, or shall advise, encourage or promote, such duel, such person shall be imprisoned in the penitentiary not less than one nor more than five years.

**If any Person** shall post another, or in writing or print use any reproachful or contemptuous language to or concerning another for not fighting a duel, such person shall be imprisoned in the penitentiary not less than one nor more than ten years.

#### ACCESSORIES.

**Accessories.**—All persons who, after the commission of a felony, conceal or aid the offender, with knowledge that he has committed a felony and with intent that he may avoid or escape from arrest, trial, conviction or punishment, are accessories.



**Punishment.**—Except in cases where a different punishment is prescribed by law, an accessory to a felony, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

In Misdemeanor, there are no accessories.

### CUSTOM.

**Custom.**—Such a usage as has common consent and uniform practice, has become the law of the place or of the matter to which it relates. The common law is custom ripened into law.

**General Customs,** are such as constitute a part of the common law, and extend to the whole country.

**Particular Customs,** are those which are confined to a particular place.

To Establish a Custom, it will be necessary to show its existence for so long a time that “the memory of man runneth not back to the period of its non-existence,” and that the usage has continued without any interruption of the right.

It must have been peaceably acquiesced in and not subject to dispute, for, as customs owe their origin to common consent, the fact that they have been disputed shows that such consent was wanting. See COMMON LAW.

### DAMAGE.

**Damage.**—The loss caused by any person to another or to his property. He who has caused the damage is bound to repair it; and, if he has done it maliciously, he may be compelled to pay beyond the actual loss. When damage occurs by accident, without blame to any one, the loss is borne by the owner of the thing injured; as, if a horse run

away with his driver, without any fault of the latter, and injure the property of another person, the injury is the loss of the owner of the thing injured. When the damage happens by the "act of God" or inevitable accident, as by tempest, earthquake or other natural cause, the loss must be borne by the owner. See ACT OF GOD.

## DAMAGES.

**Damages.**—The sum claimed as indemnity in a complaint or answer.

**Compensatory Damages**, are those allowed as a recompense for injury actually received.

**Consequential Damages**, are those which, though directly, are not immediately consequential upon the act or default complained of.

**Exemplary Damages**, are those allowed as a punishment for wrongs committed with fraud, malice or deliberate violence or oppression.

**General Damages**, are those which necessarily and by implication of law result from the act or default complained of.

## DAYS OF GRACE.

**Days of Grace.**—Certain days allowed to the acceptor of a bill or the maker of a note, in which to make payment, in addition to the time contracted for by the bill or note itself.

**According to Law**, days of grace are allowed on bills payable at the following places, according to this table :

**In the United States**, three days, except Vermont, where no grace is allowed, and Louisiana, where, although on bills and notes made and payable in the state three days are allowed, the bill or note is considered to be due without the grace for purposes of set-off.

**In New York**, bills on bank corporations are not entitled to grace by statute.

**Altona and Hamburg.**—Twelve days.

**Great Britain, Ireland, Berlin, Trieste and Vienna.**—Three days.

**Amsterdam, Antwerp, Genoa, France, Leghorn and Palermo.**—None.

**Brazil, Rio Janeiro and Bahia.**—Fifteen days.

**Frankfort-on-the-Main.**—[Sundays and holidays not included] four days.

**Spain.**—The time varies in different parts—generally fourteen days on foreign and eight on inland bills. At Cadiz, six days are allowed. When bills are drawn at a certain date fixed—no grace. Bills at sight are not entitled to grace, nor are any bills, unless accepted.

**Lisbon and Oporto.**—Fifteen days on local bills and six on foreign, but if not previously accepted, no grace.

**In California, Nevada, Oregon, Washington, Utah, Idaho, Montana, New Mexico and Arizona**, three days' grace are allowed. See **BILLS AND NOTES**.

**Days of Grace** are computed in America, by adding three days to the term of the bill or note, irrespective of the fact that the day on which the bill would be due, without the days of grace, is a Sunday or a holiday. Bankers' checks are payable on demand, without days of grace. See **BILLS AND NOTES**, as to the rule on the Pacific Coast

## DE FACTO.

**De Facto.**—Actually; in fact; in deed. A term used to denote a thing actually done.

An officer, *de facto*, is one who performs the duties of an office with apparent right and under claim and color of an appointment, but without being actually qualified in law so to act.

## DEBT.

**Debt.**—A sum of money due by agreement, or any claim for money.

**Hypothecary Debts**, are those which are liens upon an estate.

**Judgment Debts**, are those demands evidenced by judgment of record.

**Privileged Debts**, are those which are to be paid before others in case a debtor should be insolvent.

A debt may be evidenced by matter of record, by contract under seal or by a simple contract.

## DECEIT.

**Deceit.**—A fraudulent misrepresentation, by which one man deceives another who has no means of detecting the fraud, to the injury and damage of the latter.

**Fraud**, or the intention to deceive, is the very essence of the injury; for, if the party misrepresenting was himself mistaken, no blame can attach to him. It may be by the deliberate assertion of a falsehood to the injury of another, or by the failure to disclose a latent defect, or by concealing an apparent defect. See **CAVEAT EMPTOR**.

## DECLARATION OF INTENTION.

**Declaration of Intention.**—The act of an alien who goes before a court of record and in a formal manner declares that it is, *bona fide*, his intention to become a citizen of the United States. See **NATURALIZATION**.

## DEDICATION.

**Dedication.**—An appropriation of land to some public use, made by the owner and accepted for such use by or on behalf of the public.

**Express Dedication**, is made by deed, vote or declaration.

**Implied Dedication**, is that presumed from acquiescence in the public use.

**In making the Appropriation**, no particular formality is required; any act or declaration which clearly expresses an intent to dedicate, will amount to a dedication, if accepted by the public, and will conclude the donor from ever after asserting any right incompatible with the public use.

**Without Acceptance**, a dedication is incomplete. The various town governments, county commissioners or supervisors, are the proper bodies to accept land dedicated to public use; and when so accepted, the title vests in the public.

## DEED.

**Deed.**—A written instrument under seal, containing a written contract or agreement, which has been delivered by the party to be bound, and accepted by the obligee or covenantee. See CONVEYANCING.

## DEFAMATION.

**Defamation.**—The speaking or writing words of a person so as to hurt his good fame. Written defamation, is termed a libel, and oral defamation, slander. See LIBEL AND SLANDER and CRIMES AND PUNISHMENTS.

## DEFAULT.

**Default.**—The non-performance of a duty, whether arising under a contract or otherwise.

**In Practice of Law**, the non-appearance of a plaintiff or defendant at court within the time prescribed by law, to prosecute his claim or make his defense. A neglect of a

defendant to a suit to file an answer within the period allowed by law.

## DEFEASANCE.

**Defeasance.**—An instrument which defeats the force or operation of some other deed or estate.

**Mortgages** are usually drawn in the form of a deed conveying the land absolutely to the mortgagee, with a clause inserted after the granting part, providing that, upon payment of a sum named, the conveyance shall be null and void. Such a clause is termed a defeasance.

## DEFENDANT.

**Defendant.**—A defendant is a person called upon to answer to either a civil or criminal proceeding.

## DEFENSE.

**Defense.**—A forcible resistance of an attack by force.

A Man is justified in defending his person, also that of his wife, children and servants, and for this purpose he may use as much force as may be necessary, even to killing the assailant; *remembering, that the means used must always be proportioned to the occasion, and that an excess becomes itself an injury.* The resistance must be in defense and not in revenge.

Let no Man deceive himself in the belief that he is the judge of the necessity to kill. The jury before whom he must be tried are the sole judges of that fact; and, if from the evidence it appears that he was mistaken as to such necessity, he must atone to the offended law. See **CRIMES AND PUNISHMENTS—ASSAULT AND ASSAULT AND BATTERY.**

**Defense in Civil Proceeding,** is the answer of a defendant to the plaintiff's complaint, and facts proved by him that tend to defeat plaintiff's claim.

## DELIVERY.

**Delivery.**—The transfer of a deed from the grantor to the grantee or some person acting in his behalf, in such a manner as to deprive the grantor of the right to recall it at his option.

**Absolute Delivery**, is that which is complete upon the actual transfer of the instrument from the possession of the grantor.

**Conditional Delivery**, is that which passes the deed from the possession of the grantor, but is not to be completed by possession in the grantee or a third person as his agent until the happening of a specified event. A delivery in this manner is an *escrow*, and such a delivery must be always made to a third person.

## DEMAND.

**Demand.**—Demand is a word of an extent greater in its signification than any other word, except claim.

**A Release of all Demands**, is a release of all agreements, conditions, bonds, obligations, contracts and the like, and is a bar to actions on the demands released.

In Civil Practice, it is often necessary to secure to a party all his rights and to enable him to bring an action, that he should make a demand upon the party bound to perform the contract or discharge the obligation; thus, where property is sold, to be paid for on delivery, a demand must be made and proved on trial before bringing an action for non-delivery; but no demand need be proved if the seller has incapacitated himself from delivering them. This rule applies also to contracts to marry.

In Cases where the Taking of Goods is lawful but their subsequent detention becomes illegal, it is in all cases necessary, before bringing suit, to give a formal notice of the owner's right to the property and possession, and make

a formal demand, in writing, of the delivery of such possession to the owner; but if the property is detained by a trespasser or if the goods have come illegally into the party's hands, no demand need be made.

### DEMURRAGE.

**Demurrage.**—The delay of a vessel by the freighter beyond the time allowed for loading, unloading or sailing. Payment for such delay is demurrage.

### DEMURRER.

**Demurrer.**—In pleading, an allegation that—admitting the facts of the complaint or answer to be true, as stated by the party making it—he has yet shown no cause of action or defense. For example: A has a demand against B for the erection of a house. A sues B, and alleges in his complaint, that B agreed to pay him (A) a certain sum on the completion of the house, but he neglects to allege that the house has been built. Now, it is evident that A cannot recover of B until he has completed his contract—that is, completed the house—and, having failed to allege that fact, his complaint is said to be demurrable; and B demurs to the complaint on the ground that it fails to state facts sufficient to constitute a cause of action—that is, it fails to allege that the house was completed. Such plea is a demurrer.

### DEPONENT.

**Deponent.**—One who gives information on oath or information, respecting some facts known to him, before a magistrate; he who makes a deposition.

### DEPOSIT.

**Deposit.**—A naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it.



**In case of Deposits with a banker** the debtor of the depositor. The money deposited together to be the money of the depositor at the banker. It is his to do what he pleases and no trust created. If he refuses to pay demand, the depositor may sue and recover the same as any other debt. The banker is not liable for interest unless expressly contracted for, and the deposit is subject to the statute of limitations. See LIMITATIONS.

## DEPOSITION.

**Deposition.**—The testimony of a witness reduced to writing, in due form of law, by virtue of a commission or other authority of a competent tribunal or according to the provisions of some statute law, to be used on the trial of some question of fact in a court of justice.

In California, Nevada and Idaho, the testimony of a witness may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases :

1st. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

2d. When the witness resides out of the county in which his testimony is to be used.

3d. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

4th. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

Either Party may have the deposition taken of a witness before any judge or clerk, or any justice of the peace or notary public, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one men-

tioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending. Such notice shall be at least five days, and in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

**Either Party may attend such examination, and put such questions, direct and cross, as may be proper.** The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelop or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by the reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial, that the witness continues absent or infirm, to the best of deponent's knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

**The Testimony of a Witness out of the state or territory may be taken by deposition, in an action, at any time after**

the service of the summons or the appearance of the defendant ; and in a special proceeding, at any time after a question of fact has arisen therein.

**Depositions** may be taken in criminal cases under the provisions of the criminal practice statutes.

## DESCENT.

**Descent.**—Title by descent is the title by which one person, upon the death of another, acquires the estate of the latter as his heir-at-law.

## DESCENT AND DISTRIBUTION.

### CALIFORNIA, NEVADA AND IDAHO.

**Descents and Distributions.**—When any person, having title to any estate not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner:

1st. If there be a surviving husband or wife and only one child or the lawful issue of one child: in equal shares to the surviving husband or wife and child, or issue of such child. If there be a surviving husband or wife and more than one child living, and the lawful issue of one or more deceased children: one-third to the surviving husband or wife, and the remainder in equal shares to his or her children and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants ; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation.

2d. If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife and to the intestate's father. If there be no father, then one-half shall

go in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister, by right of representation : *provided*, that if he or she shall leave a mother also, she shall take an equal share with the brothers and sisters. If he or she shall leave no issue, or husband or wife, the estate shall go to his or her father.

3d. If there be no issue, nor husband, nor wife nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation : *provided*, that if he or she shall leave a mother also, she shall take an equal share with the brothers and sisters.

4th. If the intestate shall leave no issue, nor husband, nor wife nor father, and no brother or sister living, at his or her death, the estate shall go to his or her mother, to the exclusion of the issue, if any, of deceased brothers and sisters.

5th. If the intestate shall leave a surviving husband or wife and no issue, and no father, mother, brother or sister, the whole estate shall go to the surviving husband or wife.

6th. If the intestate shall leave no issue, nor husband, nor wife, and no father, mother, brother nor sister, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote : *provided*, however—

7th. If any person shall die, leaving several children or leaving one child, and the issue of one or more children, and any such surviving child shall die under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died by right of representation.

8th. If, at the death of any such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them

shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the said estate equally, otherwise they shall take according to right of representation.

9th. If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the state for the support of common schools.

**Illegitimate Children.**—Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child. The estate of illegitimate children, leaving no issue, decends to the mother.

**Issue of Null Marriages.**—The issue of all marriages deemed null in law or dissolved by divorce shall be legitimate.

**Degrees of Kindred.**—Kindred of the half blood inherit equally with those of the whole blood.

**Aliens may Inherit.**—Aliens may hold, by inheritance, real and personal estate in as full manner as though they were native-born citizens of this or the United States : *provided*, such non-resident alien claims the same within five years. If such estate is not claimed within five years, then it must be sold, and the proceeds placed in the state treasury. Within five years after such sale, the proceeds may be claimed by the person entitled to the same. If not claimed within five years, the proceeds go to the school fund.

## DESERTION.

**Desertion.**—An offense which consists in the abandonment of the public service, in the army or navy, without leave.

In the Domestic Relation, it means the act by which a

man abandons his wife, or a woman her husband or children. On proof of desertion, the courts possess the power to grant the wife alimony. A continued desertion by either husband or wife, after a certain lapse of time, entitles the innocent party to a divorce. See **ALIMONY** and **DIVORCE**.

### DETAINDER

**Detainer.**—The act of keeping a person against his will, or of withholding the possession of goods or other personal or real property from the owner. See **LANDLORD** and **TENANT**.

### DEVIATION.

**Deviation.**—In insurance, deviation means varying from the risks insured against, as described in the policy, without necessity or just cause after the risk has begun. See **INSURANCE**.

**When a Contract is made,** to build a structure of any description, according to any plan, and the contract is varied by alteration of the plan, this alteration or variance is called a deviation.

### DEVISEE.

**Devisee.**—A person to whom a gift has been made by will.

**Devisor.**—A person who devises or gives property to another by his will. See **WILLS**.

### DISCOUNT.

**Discount.**—Interest reserved from the sum of money loaned at the time of making the loan. Discount is frequently allowed for prompt payment of bills, notes or other money demands. Frequently, the holder of a note or other obligation for the payment of money, assigns such

obligation before it is due to a bank or money broker for a less sum than the face of the instrument. The sum generally deducted is the interest. The contract is binding, and is called *discounting*.

## DISHONOR.

**Dishonor.**—A term applied to the non-fulfillment of commercial engagements. To dishonor a bill of exchange or promissory note, is to refuse or neglect to pay it at maturity. The holder is bound to give notice to the parties to such instrument of its dishonor, and, if such notice is not given, the indorsers are discharged. See **BILLS AND NOTES**.

## DIVORCE.

**Divorce.**—The dissolution or partial suspension, by law, of the marriage relation.

In California and Idaho, the several district courts, within their respective districts, have exclusive jurisdiction to grant a divorce, from bed and board, and from the bonds of matrimony.

Divorces may be granted from bed and board or from the bonds of matrimony.

No Person shall be allowed to apply for a divorce, who has not been a resident of the state or territory for a period of six months immediately preceding such application.

For what causes Divorces will be Granted.—Divorces from bed and board or from the bonds of matrimony, may be granted:

1st. For impotence existing at the time of marriage.

2d. When the female, at the time of the alleged marriage, was under the age of fourteen years, and the alleged marriage was without the consent of her parents or guardian, or other person having the legal custody or charge of her person, and when such marriage was not voluntarily ratified on her part, after she had attained the age of fourteen years.

3d. By an act of adultery by either of the parties; but no divorce shall be granted upon the application of the party guilty of the act of adultery complained of, nor if it appear to the court that the adultery complained of was by collusion of the parties, nor when it shall appear that the parties have lived and cohabited together as man and wife after knowledge of the act of adultery complained of.

4th. For extreme cruelty in either party, by inflicting upon the other grievous, bodily or mental, suffering, or for habitual intemperance, or for willful desertion by either party for the period of two years, or for willful neglect on the part of the husband to provide for his wife the common necessities of life, having the ability to provide the same, for the period of two years [in Idaho, three years]; *having the ability to provide the same or failing so to do by reason of his idleness, profligacy or dissipation.* [The Italics applicable to California alone.]

5th. When the consent of either of the parties to the marriage was obtained by force or fraud, upon the application of the party injured.

6th. In case of the conviction of either party for a felony after marriage. [In Idaho, the same where the punishment is not less than imprisonment for two years.]

**Witnesses.**—Either party may be a witness on the trial of such action, but no divorce shall be granted on their testimony, unless corroborated by other evidence. [Applicable to California alone.]

**For Natural Impotency.**—No action for a divorce, on the ground of natural impotency existing at the time of the marriage, shall be allowed except by the injured party, nor unless instituted within two years after the solemnization of the marriage.

**Legitimacy of Children.**—When a divorce is granted on the ground of adultery on the part of the wife, the legitimacy of any children, born or begotten of her before the act of adultery complained of, shall not be affected by the divorce.



**Alimony allowed.**—In any action for a divorce, the court may, during the pendency of the action or at the final hearing or afterward, make such order for the support of the wife and the maintenance and education of the children of the marriage as may be just, and may at any time thereafter annul, vary or modify, such order, as the interest and welfare of the children may require.

**No Divorce allowed by Default.**—No divorce shall be granted in any action by default of the defendant, nor on the admission or statement of either party, but in all cases the court shall require proof of the facts alleged as the grounds for a divorce.

**No Divorce shall be granted in any action,** by default of the defendant, nor on the admission or statement of either party, but in all cases the court shall require proof of the facts alleged as the grounds for a divorce, which proof, if taken before a referee, shall be upon written questions and answers, and free from all legal exceptions as to its competency, admissibility and sufficiency. Nor shall it be lawful for any court to grant a divorce upon any statement or finding of facts by a referee, but only upon the legal testimony taken in the cause. In every action for a divorce, the complaint must be verified.

#### OREGON.

**Certain Marriages Void.**—All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this state, be absolutely void, without any decree of divorce or other legal proceedings.

**Marriage of Minors and Others may be Voided.**—When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when the consent of either party shall have been obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be

void from the time its nullity shall be declared by a court of competent authority.

**In no case shall a Marriage be adjudged a Nullity**, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they had attained such age, had, for any time, freely cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together, as husband and wife, after such insane person was restored to a sound mind.

**When a Marriage is supposed to be Void or the validity thereof is disputed**, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties or one of them reside, for annulling the same, and such complaint shall be filed, and proceedings shall be had thereon as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage it shall be adjudged null and void.

**Grounds of Divorce and where to be Tried.**—Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the district court of the county in which the cause therefor shall have occurred or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited or in which the plaintiff shall have resided for six months before suit be brought, for the following causes:

1st. Impotency at the time of the marriage, continuing to the time of the divorce.

2d. Adultery since the marriage, remaining unforgiven.

3d. Willful desertion of either party by the other for the space of one year.

4th. Conviction of felony or infamous crime.

5th. Habitual, gross drunkenness, contracted since marriage.

6th. Harsh and cruel treatment or personal indignities, rendering life burdensome.

7th. Voluntary neglect of the husband to provide the wife with a home and the common necessities of life for the space of one year.

**Duty of District Attorney.**—In any suit to dissolve the marriage contract the state is to be deemed a party, and the summons must be served on the district attorney. In case the defendant makes default or fails to defend in good faith, he shall conduct the defense and defend such action on the part of the state.

WASHINGTON.

**Ground of Divorce.**—Divorces may be granted for the following causes :

1st. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud and there has been no subsequent voluntary cohabitation.

2d. For adultery on the part of the wife or of the husband when unforgiven, and application is made within one year after it shall come to his or her knowledge.

3d. Impotency.

4th. Abandonment for one year.

5th. Cruel treatment of either party by the other.

6th. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family.

7th. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment. And divorce may be granted on application of either party for any other cause deemed by the court sufficient, or where the court shall be satisfied that the parties can no longer live together.

**Decree of Nullity.**—When there is any doubt as to the facts rendering a marriage void, either party may apply for and, on proof, obtain a decree of nullity of marriage.

**Who may Sue.**—Any person who has been a resident of the territory for one year may file his or her complaint for

a divorce or decree of nullity of marriage, under oath, in the district court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

**Proceedings on Default.**—When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proofs before granting a divorce or a decree of nullity.

**Disposition of Property.**—In granting a divorce, the court shall also make disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody and support and education, of the minor children of such marriage.

**Name may be Changed.**—The order of divorce from the bonds of matrimony shall, if granted, completely dissolve the marriage as to both parties; and the court may, on granting the divorce, change the name of the female, who shall thereafter be known by the name fixed by the court.

**Duty of Prosecuting Attorney.**—It is made the duty of the prosecuting attorney to resist all petitions for divorce which are undefended.

#### NEVADA.

**Certain Marriages Void.**—All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this state, be absolutely void, without any decree of divorce or other legal proceedings.

**When either of the Parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved and there shall have been no subsequent voluntary cohabitation of the par-**

ties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

**In no case** shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties, after they attained such age had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

**Proceeding had.**—When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

**Grounds of Divorce.**—Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the probate court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited or in which the plaintiff shall have resided for six months before suit be brought, for the following causes:

1st. Impotency at the time of the marriage, continuing to the time of the divorce.

2d. Adultery since the marriage, remaining unforgiven.

3d. Willful desertion of either party by the other, for the space of two years.

4th. Conviction of felony or infamous crime.

5th. Habitual, gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party

from contributing his or her share to the support of the family.

6th. Extreme cruelty in either party.

7th. Neglect of the husband for the period of two years, to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband which he could not avoid by ordinary industry.

**Non-residents.**—If the defendant is not a resident of the state, or cannot for any cause be personally summoned, the court or judge, in vacation, may order notice of the pendency of the suit to be given in such manner and during such time as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear and make defense at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard and the cause decided at that term, or compulsory process may be had to obtain an appearance or answer, if it be necessary to the disposition of property or children.

**Disposition of Property.**—The court in granting a decree, shall make such disposition of and provisions for the children as shall appear most expedient under all the circumstances, and wisest for the present comfort and future well-being of such children; and when, at the commencement and during the pendency of said suit, it shall be made to appear to the court or to the judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother or other female, has been or is likely to be taken or detained from her, or that any child of either party has been or is likely to be taken or removed by or at the instance of the other party out of the county or concealed within the same, it shall be the duty of the court or of such judge, in vacation,

forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced and made effectual by attachment, commitment and requiring security for obedience thereto or by other means, according to the usages of the courts and to the circumstances of the case: *provided*, the court, upon good cause shown, may change the custody of such minor children if they should be satisfied that such change will be for the welfare of such children.

**Discretion of Court.**—In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired and to the burdens imposed upon it for the benefit of the children; and all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of, be regulated by the order of the court, shall, by such divorce, be divested out of the guilty party and vested in the party at whose instance the divorce was granted; and if, after the filing of the petition, it shall be made to appear probable to the court or to the judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

**Testimony of Witnesses.**—The testimony of witnesses in suits for divorce shall be given orally in court, with the right to either party to take and use depositions on the same terms and in the same manner as in actions at law, and the proceedings, pleadings and practice, shall conform to those at law as nearly as conveniently may be, but all preliminary

and final orders may be in such form as will best effect the object of this act and produce substantial justice.

**Alimony may be Granted.**—When the marriage shall be dissolved, by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead ; but in other cases, the court may set apart such portion for her support and the support of their children as shall be deemed just and equitable. In any suit for divorce now pending or which may hereafter be commenced, the court or judge may, in its discretion, upon application, of which due notice shall have been given to the husband or his attorney at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit and for her support and the support of the children of the parties during the pendency of such suit ; and the court or judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife, for such purpose, of any sum or sums that may be due or owing to the husband from any quarter, and may enforce all orders made in this behalf.

**Effect of Decree.**—Whenever an order of divorce from the bonds of matrimony is granted in this state, by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties ; and in all suits for a divorce, brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall in its order decree and appoint.

**Jury Trial may be had.**—Either party, on application to the court, may be entitled, at such trial, to have the issue of fact involved in such case and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.



## DOGS.

## CALIFORNIA.

See APPENDIX.

## DOMICILE

**Domicile.**—The place where a man has his fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.

**Two things** must concur to establish domicile—the fact of residence and the intention of remaining. The character of the residence is of no importance; and, if it has once existed, mere temporary absence will not destroy it, however long continued. A man may change his domicile, but the original domicile continues till it is fairly changed for another.

The Domicile of the husband is that of the wife. A woman, on marriage, takes the domicile of her husband; but if she is entitled to a divorce, she may acquire a separate domicile, which may be in the same jurisdiction.

## DOWER.

**Dower.**—The provision which the law makes for the widow, out of the lands or tenements of her deceased husband, for her support. Oregon is the only state on the Pacific Coast where dower is allowed. In California, Nevada, Idaho and Washington, one-half of all the common property becomes the property of the widow, on the death of her husband. See HUSBAND AND WIFE.

## DURESS.

**Duress.**—Personal restraint, or fear of personal injury or imprisonment.

If a Man be illegally deprived of his liberty until he sign or seal an instrument, such as a bond, note or the like, he may prove this duress and avoid the instrument so signed.

If a Man is held in fear of great personal injury, and, laboring under such fear, signs a bond, note or the like, he may avoid such act on the ground of duress; but the vio-

lence or threats must be such as are calculated to operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. In considering such duress, the age, sex, state of health, temper and disposition, of the party, and other circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration.

### EARNEST.

**Earnest.**—The payment of a part of the price of goods sold, or the delivery of part of such goods for the purpose of binding the contract.

The effect of Earnest, is to bind the goods sold; and, upon the price being paid, the purchaser is entitled to them. After earnest paid, the vendor cannot sell the goods to another; and, therefore, if the vendee does not come and pay and take the goods, the vendor ought to go and request him, and then if he does not pay for the goods the agreement is at an end and the vendor may sell the goods.

### EASEMENT.

**Easement.**—A right of the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose.

Easements are as various as the purposes to which lands and tenements may be applied.

The following are a few of the many easements: Of pasture; taking game; of right of way over land; taking wood, minerals or other produce, of the soil; of receiving air, light or heat, from over other land; of receiving or discharging water over; or having support to buildings from other land; of going on other land to clear a stream or repair its banks, or draw water from a spring there; or do some other act not involving ownership, etc.

All Easements must originate in a grant or agreement,

express or implied, of the owner of the soil. The evidence of this grant may be by proof of the agreement itself or by proof of immemorial usage or usage, in the states of the Pacific, for five years under a claim of right.

**Easements** are extinguished the same as other rights are extinguished. See **RIGHT OF WAY**.

### EFFECTS.

**Effects.**—Property of any description. In a will, “effects” carry the whole personal estate, but not real estate, unless the word “real” be added.

### EJECTMENT.

**Ejectment.**—A form of action which lies to regain the possession of real estate, with damages for the withholding. Ejectment is a possessory action, and must be brought against the occupant; it determines no rights but those of possession at the time, and it matters not who has or claims to have the title of the premises.

In California, Nevada and Idaho, an action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate or interest.

If the Defendant, in such action, disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

In an Action for the Recovery of Real Property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

**When Damages are Claimed** for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

**The Plaintiff** must recover on the strength of his own title, and cannot rely on the weakness of the defendant's.

## ELECTION.

**Election.**—The selection of one man from amongst more, to discharge certain duties in a state, corporation or society.

**The Obligation** imposed upon a party to chose between two inconsistent or alternative rights or claims, in cases where there is a clear intention of the person from whom he derives one that he shall not enjoy both.

**In Contracts**, when a debtor is obliged to do one of two things, as to pay one hundred dollars or deliver one hundred bushels of wheat, he has the choice to do one or the other until the time of payment; he has not the choice, however, to pay part in each. If a man sells or agrees to deliver one of two articles, as a horse or an ox, he has the election till the time of delivery, it being a rule that "in case an election be given of two several things, always he which is the first agent and which ought to do the first act, shall have the election."

## ELECTOR.

**Elector.**—One who has the right to make choice of public officers; one who has a right to vote.

**The Qualifications** of electors are generally the same as those required in the person to be elected. To this rule there is one exception: A naturalized citizen may be an elector of president of the United States, although he could not, under the constitution, be elected to that office.

**Electors of President**, are persons elected by the people of a state, whose sole duty is to elect a president and vice-president of the United States. Each state elects the same number of electors as it has senators and representatives. California has five, Nevada and Oregon, three each. The territories have no voice in the election of a president.

### ELOPEMENT.

**Elopement**.—The departure of a married woman from her husband and dwelling with an adulterer.

While the Wife resides with her husband and cohabits with him, however exceptionable her conduct may be, yet he is bound to provide her with necessaries and to pay for them; but when she elopes, he is no longer liable for her support, and is not bound to pay debts of her contracting, when the separation is notorious; and whoever gives her credit, does so, under these circumstances, at his peril.

### EMBARGO.

**Embargo**.—A proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all the ports of such state, until further orders.

### EMBEZZLEMENT.

**Embezzlement**.—The fraudulent removing and secreting of personal property, with which the party has been intrusted, for the purpose of applying it to his own use. See **CRIMES AND PUNISHMENTS**.

### EMBLEMENTS.

**Emblements**.—The right of a tenant to take and carry away, after his tenancy has ended, such annual profits of the land as have resulted from his own care and labor.

**All such Crops**, as, in the ordinary course of things, return the labor and expense bestowed upon them within the current year, become the subject of emblements, consisting of grain, peas, beans, hemp, flax and annual roots, such as parsnips, carrots, turnips and potatoes, as well as the artificial grasses, which are usually renewed like other crops. But such things as are of spontaneous growth, as roots and trees not annual, and the fruit on such trees, although ripe, and grass growing, even if ready to cut, or a second crop of clover, do not fall within the description of emblements.

### EMBRACEOR.

**Embraceor.**—He who, when a matter is on trial, comes to the bar with one of the parties, and, for a reward, privately corrupts the jury or stands there to survey or overlook them, thereby to put them in fear or doubt.

**Embracery**, is an attempt to corrupt or influence a court or jury, or any way incline them to be more favorable to one side than the other, for a reward or through fear. See **CRIMES AND PUNISHMENTS**.

### EMINENT DOMAIN.

**Eminent Domain.**—The power to take private property for public use in cases where the public good demands its exercise.

**This Power** can never be exercised until a fair compensation is made for the *property taken* by the public.

### ENGROSS.

**Engross.**—To copy the rude draught of an instrument, in a fair, large hand. The term is applied to statutes, which, after being read and acted on a sufficient number of times, are ordered to be engrossed.

## ENTER.

**Enter.**—To go upon lands for the purpose of taking possession; to take possession. An attorney is said to enter his appearance, or the party himself may enter an appearance. A voluntary appearance of a defendant is equivalent to personal service of summons upon him. See APPEARANCE.

## ENTRY.

**Entry.**—The submitting to the inspector of officers appointed by law, who have the collection of the customs, goods imported into the United States, together with a description of such goods and the original invoices of the same, for the purpose of estimating the duties to be paid thereon.

**In Criminal Law,** the act of entering a dwelling-house or other building in order to commit a crime. See CRIMES AND PUNISHMENTS.

**In Civil Practice,** the act of going upon the lands of another or lands claimed as one's own, with intent to take possession. See LANDLORD AND TENANT.

## EQUALITY.

**Equality.**—Likeness in possessing the same rights, and being liable to the same duties.

Persons are all equal before the law, whatever adventitious advantages some may possess over others. All persons are protected by the law, and obedience to it is required by all. By virtue of section one, article fourteen, of the constitution of the United States, "no state \* \* \* deny to any person within its jurisdiction the *equal* protection of the law."

**In Contracts,** the law presumes that the parties act upon a perfect equality; when, therefore, one party uses any

fraud or deceit to destroy this equality, the party injured may avoid the contract. In case of a grant to two or more persons jointly, without designating what each takes, they are presumed to take in equal proportions.

## EQUITY.

**Equity.**—A branch of remedial justice by and through which relief is afforded to suitors in the courts of equity.

In the States and territories of the Pacific, legal and equitable relief are administered by the same tribunal. Formerly, courts of equity had rules and forms distinct from courts of law governing proceedings in them ; but now, by authority of legislative enactment, there is but “one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.”

The Statute makes no distinction in matters of form between actions of contract and those of tort, and relief is administered without reference to the technical and artificial rules of the common law ; and all matters arising and constituting part of the same transaction may be litigated in the same action. Every action under our system may be termed an action on the case, and any ground of relief which can be regarded as part of the case may be included in the action, but the general principles which govern such actions are retained.

**Rules and Maxims of Equity.**—Equity has certain rules and maxims which are of special significance :

1st. Equity, having once had jurisdiction of a subject matter, because there is no remedy at law or because the remedy is inadequate, *does not lose the jurisdiction* merely because the courts of law afterwards give the same or similar relief.

2d. Equity follows the law. This is true as a general maxim. Equity follows the law, except in relation to those matters which give title to equitable relief, because



the rules of law would operate to sanction fraud or injustice in the particular case.

3d. When there is equal equity the law must prevail. The ground upon which a suitor comes into a court of equity is, that he is entitled to relief there. But if his adversary has an equally equitable case the complainant has no title to relief.

4th. Equality is equity. This is applied to cases of contribution, apportionment of moneys due among those liable or benefited by the payment; abatement of claims on account of deficiency of the means of payment, etc.

5th. He who seeks equity must do equity. A party cannot claim the interposition of the court for relief unless his own hands are clean; unless he will do what is equitable should be done by him as a condition precedent to that relief.

6th. Equity considers that as done which ought to be done. In favor of parties who would have had a benefit from something contracted to be done and who have an equitable right to have the case considered as if it had been done, equity applies this maxim. For example: Where there is an agreement for a sale of land, and the vendor dies, the land may be treated as money, and the proceeds of the sale, when completed, go to the distributees of personal estate instead of to the heir. If the vendee dies before the completion of the purchase, the purchase money may be regarded as land for the benefit of the heir.

## EQUITY OF REDEMPTION.

**Equity of Redemption.**—A right which the mortgagee of an estate has of redeeming it, after it has been forfeited at law by non-payment at the time appointed of the money secured by the mortgage to be paid, by paying the amount of the debt, interest and costs. See REDEMPTION.

## ESCAPE.

**Escape.**—The deliverance of a person who is lawfully imprisoned, out of prison, before such person is entitled to such deliverance. The voluntarily or negligently allowing any person, lawfully in confinement, to leave the place.

**Negligent Escape** takes place when the prisoner goes at large, unlawfully, either because the building or prison in which he is confined is too weak to hold him, or because the keeper by carelessness lets him go out of prison.

**Voluntary Escape** takes place when the prisoner has given to him voluntarily any liberty not authorized by law. An officer is liable for the escape of a prisoner in his custody. See **CRIMES AND PUNISHMENTS**.

## ESCHEAT.

**Escheat.**—It seems to be the universal rule of civilized society, that when the deceased owner left no heirs, his estate vests in the public, to be disposed of by the government. Such reversion of lands or other property is an "escheat," and the property escheated is termed "escheated estate."

In California, Nevada and Idaho, if a person dies within their limits, seized of any real or personal estate, and leaving no heirs, representatives or devisees, capable of inheriting or holding the same, and in all cases where there is no owner of such real estate capable of holding the same, such estate escheats to and vests in the state.

## ESCROW.

**Escrow.**—A deed delivered to a stranger, to be by him delivered to the grantee upon the happening of certain conditions. When the conditions happen and the deed delivered, the transmission of title is complete.

The delivery must be to a stranger, and has no effect as a deed till the performance of the condition.

## ESTATES OF DECEASED PERSONS.

CALIFORNIA, NEVADA AND IDAHO.

**Probate Courts and Jurisdiction of.**—See COURTS OF JUSTICE.

**Jurisdiction of Estates.**—Wills shall be proved and letters testamentary or of administration granted :

1st. In the county of which deceased was a resident, at or immediately previous to his death, in whatever place his death may have happened.

2d. In the county in which he may have died, leaving estate therein and not being a resident of the state.

3d. In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death.

4th. In the county in which any part of his estate may be, he not being a resident of the state, and not leaving estate in the county in which he died.

5th. In all other cases, in the county where application shall first be made.

**Order of Administration.**—Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order :

1st. The surviving husband or wife, or some person as he or she may appoint.

2d. The children.

3d. The father or mother.

4th. The brothers.

5th. The sisters.

6th. The grandchildren.

7th. Any other of the next of kin who would be entitled to share in the distribution of the estate.

8th. The public administrator.

9th. The creditors.

10th. Any person or persons legally competent: *provided*, that when there was any partnership existing between the intestate, at the time of his death, and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate.

[In Nevada, the tenth order is as follows: "10th. Any of the kindred not above enumerated within the fourth degree of consanguinity." The eleventh is the same as the tenth in the foregoing. In Idaho, the seventh reads: "7th. Any other of the children," etc. The remainder is like Nevada.]

**Married Women.**—When any unmarried woman who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority. A married woman shall not be appointed administratrix.

**Application for Letters of Administration.**—Applications for letters must be in writing, signed by the applicant or his counsel, and filed with the clerk of the court.

**Contest for Administration.**—Any person interested may contest the application by filing written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administrations and pray that letters be issued to himself, after proper petition filed and due notice given.

**Proof of Death.**—The fact of death shall be proved, and the place of residence of deceased, and the character and value of his property. It shall also be ascertained whether deceased left any will.

**Re-issue of Letters.**—If letters have been issued to others than the surviving husband or wife, the child, father, mother or brother, of the intestate or any one of them, may have such letters revoked and letters issued to him or her.

**Bonds of Administrator.**—Each administrator must give bond in twice the value of the personal property of the estate, for the faithful performance of his duty. In cases of wills, no bond need be given if the will expressly waives a bond.

**Inventory of Estate.**—An inventory must be made of the estate of deceased, and returned to the court at the first term after the appointment of the executor or administrator.

**Appraisement.**—Three disinterested persons are appointed by the court to make the appraisement. If the estate consists entirely of money, appraisers need not be appointed; but the inventory must be made by the executor or administrator in all cases.

**Support of Family.**—The probate court may make a just and reasonable allowance for the support of the deceased's family, to be paid out of the estate. See HOMESTEAD and EXEMPT FROM EXECUTION.

**Claims against the Estate.**—Immediately after his appointment, the executor or administrator shall cause to be published a notice to all creditors of deceased, to present their claims to him within ten months after the first publication of such notice or they will be forever barred. Such notice shall be published at least once a week for four weeks, in a paper selected by the court.

**When Claims must be Presented.**—If a claim be not presented within ten months after the first publication of the notice it shall be forever barred: *provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute. If the claimant had no notice by reason of his being out of the state, the claim may be presented at any time before the decree of distribution is made.

**Affidavit to Claim.**—Every claim shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of the claimant or other affiant: *provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons why it is not made out by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or adminis-

trator may also require satisfactory vouchers or proof to be produced in support of his claim. The amount of interest shall be computed and included in the claim, and the rate of interest determined.

**Allowance or Rejection of Claim.**—When a claim is presented, the fact of its allowance or rejection must be indorsed on the claim, with the day and date thereof. If allowed, the same shall be presented to the probate judge for approval or rejection.

**Effect of Neglect or Refusal.**—If the executor, administrator or judge, refuse or neglect to approve or reject such a claim within ten days after it is presented to him, such refusal may be considered as equivalent to a rejection.

**Action upon Claim.**—When a claim is rejected, the holder shall bring suit in the proper court against the executor or administrator within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise the claim shall be forever barred.

**Sales of Property.**—No sale of any property of an estate of a deceased person shall be valid unless made under and by virtue of an order of the probate court.\*

**Application to Sell Property.**—Applications to sell property belonging to estates of deceased persons must be made in writing and presented to the probate court, which will either allow or refuse the same as the best interests of the estate may demand. When the order to sell is made, it will provide for either a public sale at auction, or private sale by the executor or administrator, as may to the judge seem best for the estate. All sales must be confirmed by the court before they are valid.

**General Duties of Executors and Administrators.**—They must take charge of the property of the estates they

\* This does not conflict with special acts of the legislature authorizing the sale of property belonging to certain estates named in the acts.

## ESTATES OF DECEASED PERSONS.

represent, collect all debts and pay all just claims duly proven. They may sue and be sued, and, in short, manage the estate, under the supervision of the court, so that it will suffer no injury. They are not allowed to speculate with the funds of the estate, nor can they make any profit for themselves out of it, except their commissions. They must report to the court from time to time the condition of the estate, and obey all orders made by the court. They are liable to be removed at any time by the court after notice and cause shown, and may be punished for any embezzlement or appropriation of the funds of the estate. They are not responsible for losses to their estate without their fault.

**Payment of Debts.**—The debts of the estate shall be paid in the following order :

- 1st. Funeral expenses.
- 2d. Expenses of the last sickness.
- 3d. Debts having preference by the laws of the United States.
- 4th. Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date.
- 5th. All other demands against the estate.

**Insolvent Estates.**—If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

**When Payments to be Made.**—As soon as sufficient funds come in, the expenses of the funeral and last sickness shall be paid, and also the allowance made to the family of deceased. Sufficient may be retained to pay the necessary expenses of administration, but no legacy or debt need be paid until such payment has been ordered by the court. See DESCENTS AND DISTRIBUTIONS.

FORMS.

*Inventory with the Affidavits, etc.*

Probate court, county of .....

In the matter of the estate of }  
..... deceased. }

I, ..... county clerk of the county of ....., and *ex officio* clerk of the probate court, do hereby certify that ....., ..... and ..... have been duly appointed appraisers of the estate of ....., deceased, by order of the court, duly entered and recorded on the .... day of ....., A.D. 18..

Witness my hand and seal of said probate court, this .... day of .....  
[L.S.] ..... Clerk.

State of ....., }  
county of ..... } ss.

..... and ....., duly appointed appraisers of the estate of ..... deceased, being duly sworn, each for himself says, that he will truly, honestly and impartially, appraise the property of said estate which shall be exhibited to him, according to the best of his knowledge and ability.

.....  
.....  
.....

Subscribed and sworn to before me, this .... day of ....., 18..  
..... Deputy Clerk.

INVENTORY AND APPRAISEMENT.

In the matter of the estate of }  
....., deceased. }

*Real Estate.*

1. A certain lot of land in the county of ....., described as follows, etc., etc., valued at..... \$.....
2. A certain tract of land in the county of ....., described, etc., etc., valued at.....

*Personal Estate.*

3. Promissory note, made by ....., dated ....., 18.., for \$...., indorsed by ..... Payment of \$.... receipted. Valued at.....
4. Promissory note, ...., \$...., considered worthless .....f.....
5. One horse, valued at.....
6. One-half partnership in the house of ....., valued at.....
7. Clothing and furniture, small items, valued at.....
8. Moneys that have come to the hands of the administrators.....

\$.....

All the personal estate is common property.



State of ..... }  
 ..... county of ..... } ss.

....., administrator of the estate of ..... deceased, being duly sworn says, that the annexed inventory contains a true statement of all the estate of the deceased that has come to the knowledge and possession of deponent, and particularly of all the moneys belonging to said deceased, and all just claims of said deceased against this deponent.

Subscribed and sworn to before me, this .... day of ...., A.D. 18..

.....,  
 Deputy Clerk of the Probate Court.

We, the undersigned, duly appointed appraisers of the estate of ..... deceased, do certify that the property mentioned in the foregoing appraisalment has been exhibited to us, and we appraise the same at .... dollars and .... cents.

....., 18..

.....,  
 .....  
 .....

Estate of ..... deceased,

To ..... and ....., Appraisers, Dr.

To compensation for services in appraising said estate, items as follows:

.... day's services, at .... dollars per day each..... \$......

Necessary disbursements, as follows:

Fare to ..... county and return..... \$......

\$......

Received payment,

.....,  
 .....  
 .....

This bill of appraisers' fees allowed this .... day of ...., 18..

.....,  
 Probate Judge.

State of ..... }  
 ..... county of ..... } ss.

..... and ....., the appraisers above-named, being duly sworn, each for himself says, that the foregoing bill of items is correct and just, and that the services have been duly rendered as therein set forth.

.....,  
 .....  
 .....

Subscribed and sworn to before me, this .... day of ...., A.D. 18..

.....,  
 Deputy Clerk.

#### *Creditor's Claim.*

In the matter of the estate of }  
 ..... deceased. }

Letters of administration upon the above-named estate having been granted to ... .., the undersigned presents his claims against said estate, with

the necessary vouchers, to said . . . . ., administrator, for approval, as follows, to wit:

Estate of . . . . ., To . . . . ., Dr.  
 To amount of promissory note herewith filed, dated . . . . ., 18. . . \$. . . . .  
 To interest on same, from . . . . ., 18. . ., at . . . . . per cent. per  
 month, till paid. Amount of interest at this date . . . . .  
 To cash loaned, . . . . ., 18. . . . .  
 To agreed price of horse sold and delivered, . . . . ., 18. . . . .  
 . . . . . county of . . . . ., } ss.  
 state of . . . . . }

. . . . ., whose foregoing claim is herewith presented to the administrator of said estate, being duly sworn says, that the amount thereof, to wit: the sum of . . . . . dollars, with interest as above set forth, is justly due to this claimant; that no payments have been made thereon, and there are no offsets to the same, to the knowledge of this claimant

Subscribed and sworn to before me, . . . . ., A.D. 18..

. . . . .,  
 Deputy Clerk.

[Indorsement upon this claim:]

The within claim is allowed and approved for . . . . . dollars, with interest as claimed, and . . . . . dollars for the horse. The item of . . . . . dollars is without voucher or proof, is barred by the statute of limitations and is rejected.

. . . . ., 18..

. . . . .,  
 Administrator.

Allowed and approved, this . . . . . day of . . . . ., 18. . ., for all but the item of . . . . . dollars, which latter is rejected.

. . . . .,  
 Probate Judge.

## ESTOPPEL.

**Estoppel.**—A preclusion in law, which prevents a man from alleging or denying a fact in consequence of his own previous act, allegation or denial, of a contrary tenor. A plea which neither admits or denies the facts alleged by the plaintiff, but denies his right to allege them. A special plea in bar of an action, which happens when a man has done some act or executed some deed which precludes him from averring anything to the contrary.

An **Estoppel by Deed**, arises from the provisions of a deed. It is a general rule, that a party to a deed is estopped to deny anything stated therein which has operated

upon the other party as the inducement to accept and act under such deed.

**An Estoppel by matter of Record**, arises from the adjudication of a competent court.

### EVASION.

**Evasion.**—A subtle desire to set aside the truth or escape the punishment of the law ; as, if a man should tempt another to strike him first, in order that he might have an opportunity of returning the blow with impunity. In such case, he is punishable, because he is, in the eyes of the law, the real aggressor.

### EVICTION.

**Eviction.**—Depriving a person of the possession of his lands or tenements. Total eviction takes place when the possessor is wholly deprived of his rights in the premises. Partial eviction takes place when the possessor is deprived of only a portion of them ; as, if a third person comes in and ejects him from the possession of half of the land, or establishes a right to some easement over it by a title which is prior to that under which he holds.

### EX OFFICIO.

**Ex Officio.**—By virtue of his office. Many powers are granted and exercised by public officers which are or are not expressly delegated. In all the states and territories of the Pacific, many officers have duties to perform outside of the office they hold by name ; for example, in many counties the county clerk is, *ex officio*, clerk of the board of supervisors, county recorder and auditor.

### EX POST FACTO LAW.

**Ex Post Facto Law.**—A statute which would render an act punishable in a manner in which it was not punishable

specified kind of money or currency, it shall also require the sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the sheriff shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency, shall pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of money so collected.

5th. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, damages, rents or profits, recovered by the same judgment, out of the personal property of the person against whom it was rendered and the value of the property for which the judgment was rendered, to be specified therein if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this article.

**When a Writ of Execution** is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served or who appeared in the action. In other respects, the writ shall contain the direction specified in subdivisions one and four of the foregoing.

**Notwithstanding the Death** of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator or successor in

interest, by the court in which the judgment was rendered or exists. And in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered in the same manner and with the same effect as if he were still living.

In all cases, other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion or by judgment for that purpose, founded on supplemental pleadings. See EXEMPT FROM EXECUTION.

### EXECUTOR.

**Executor.**—One to whom another man commits his last will and the carrying out of the directions of that will. See ESTATES OF DECEASED PERSONS.

### EXEMPLARY DAMAGES.

**Exemplary Damages.**—Damages allowed as a punishment for wrongs committed with fraud, actual malice or deliberate violence or oppression. Actions of libel, assault and battery, seduction, false imprisonment and the like, are those in which exemplary damages are most frequently given.

### EXEMPT FROM EXECUTION.

**Exempt from Execution.**—In California and Nevada, the following property is exempt from execution :

1st. Chairs, tables, desks and books, to the value of two hundred dollars, belonging to the judgment debtor. [In Nevada, one hundred.]

2d. Necessary household, table and kitchen, furniture belonging to the judgment debtor, including stoves, stovepipe and stove furniture, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual

or family use sufficient for one month. [In Nevada, fire-wood is also exempt.]

3d. The farming utensils or implements of husbandry of the judgment debtor ; also, two oxen or two horses, or two mules with their harness, four cows with their sucking calves, one cart or wagon, and food for such oxen, horses, cows or mules, for one month ; also all seed grain or vegetables actually provided, reserved or on hand, for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars. [In Nevada, two cows are exempt ; their calves are not.]

4th. Tools or implements of a mechanic or artisan necessary to carry on his trade ; the instruments and chest of a surgeon, physician, surveyor and dentist, necessary to the exercises of their profession, with their scientific and professional libraries ; the law libraries of attorneys and counsellers, and the libraries of ministers of the gospel.

5th. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars ; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements and appliances, necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars ; and two horses, mules or oxen, with their harness, and food for such horses, mules or oxen, for one month, when necessary to be used for any whim, windlass, derrick, car, pump or hoisting gear.

6th. Two oxen, two horses or two mules, and their harness, and one cart or wagon, one drag or truck, one coupee, one hack or carriage for one or two horses, by the use of which a cartman, drayman, truckman, hackman, huckster, peddler, teamster or other laborer, habitually earns his living ; and one horse, with vehicle and harness or other equipments, used by a physician, surgeon, or minister of the gospel, in making his professional visits, with food for such oxen, horses or mules, for one month.

7th. All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and appa-

ratus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this state.

8th. All arms, uniforms and accouterments, required by law to be kept by any person.

9th. All court-houses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances, belonging and pertaining to the court-house, jail and other public offices, belonging to any county of this state, and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a mortgage thereon.

10th. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution (or levy of attachment), when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in this state, supported wholly or in part by his labor.

In addition to the foregoing, there shall be exempted one sewing machine, of a value not exceeding one hundred dollars, in actual use by each debtor or the family of the debtor. [In Nevada, not exceeding one hundred and fifty dollars.] See, also, HOMESTEADS.

[The following applies to California only.]

**A Life Insurance Policy** is exempt from execution, but this exemption shall not extend beyond such moneys, benefits, rights, privileges and immunities, as have been or might have been secured by the payment of an annual premium not exceeding five hundred dollars.

**Searcher of Records.**—The books and papers, maps, etc., of a person engaged in searching records and making abstracts of titles, used in such business, except upon a judgment recovered for the purchase money thereof or upon a mortgage thereon.

**Pews and Lots in Cemeteries.**—Pews in churches, and lots in cemeteries not exceeding one-quarter of an acre in size, with the fences, etc. See HOMESTEADS.

#### OREGON.

**What, Exempt.**—The following is exempt from execution, if selected and reserved by the judgment debtor or his agents, *at the time of the levy* or as soon thereafter before sale thereof as the same shall be known to him, and not otherwise :

1st. Books, pictures and musical instruments, owned by any person, to the value of seventy-five dollars.

2d. Necessary wearing apparel, owned by any person, to the value of one hundred dollars ; and if such person be a householder, for each member of his family, to the value of fifty dollars.

3d. The tools, implements, apparatus, team, vehicle, harness or library, necessary to enable any person to carry on the trade, occupation or profession, by which such person habitually earns his living, to the value of four hundred dollars. Also, sufficient quantity of food to support such team, if any, for sixty days. The word "team," in this subdivision, shall not be construed to include more than one yoke of oxen or a pair of horses or mules, as the case may be.

4th. The following property, if owned by a householder and in actual use, or kept for use by and for his family, or when being removed from one habitation to another, on a change of residence : Ten sheep, with one year's fleece or the yarn or cloth manufactured therefrom ; two cows and five swine ; household goods, furniture and utensils, to the value of three hundred dollars ; also, food sufficient to support such animals, if any, for three months, and provisions



actually provided for family use and necessary for the support of such householder and family for six months.

5th. The seat or pew occupied by a householder or his family in a place of worship.

6th. All property of the state or any county, incorporated city, town or village, therein, or of any other public or municipal corporation of like character.

7th. No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sales or the article received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price. See HOMESTEADS.

#### IDAHO.

**Property Exempt.**—1st. Chairs, tables, desks and books, to the value of one hundred dollars, belonging to the judgment debtor.

2d. Necessary household, table and kitchen, furniture, belonging to the judgment debtor, including stove, stove-pipe and stove furniture, of whatsoever kind, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual or family use, sufficient for three months.

3d. The farming utensils or implements of husbandry of the judgment debtor; also, two oxen or two horses, or two mules and their harness, two cows, one cart or wagon, and food for such oxen, horses, cows or mules, for three months; also, all seed, grain or vegetables, actually provided, reserved or on hand, for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars.

4th. The tools or implements of a mechanic necessary to carry on his trade; the instruments and chests of a surgeon, physician, surveyor and dentist, necessary to the exercise of their profession, with the professional library, and the law libraries of an attorney and counselor; also, the wardrobe and books of an actor.

5th. The tent and furniture, including a table, camp-

## LAW ENCYCLOPEDIA.

cols, bed and bedding, of a miner ; also, his rocker, shovels, spades, wheelbarrows, pumps and other instruments, used in mining, with provisions necessary for his support for three months.

6th. Two oxen, two horses or two mules, and their harness and one cart or wagon, by the use of which a cartman, teamster or other laborer, habitually earns his living, and food for such oxen, horses or mules, for three months ; and a horse, harness or vehicle, used by a physician or surgeon in making his professional visits.

7th. All fire engines, with the carts, buckets, hose and apparatus thereto appertaining, of any fire company or department organized under any law of this territory.

8th. All arms and accouterments required by law to be kept by any person. But no article mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

9th. All court-houses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances, belonging and pertaining to the court-house, jail and public offices, belonging to any county of this territory ; and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings appertaining to the fire departments, and the lots and grounds thereto belonging and appertaining, owned and held by any incorporated city, or dedicated by such town or city, to health, ornament or public use. See HOMESTEADS.

## EXPERTS

**Experts.**—Witnesses who are admitted to testify from a peculiar knowledge of some art or science, a knowledge of which is requisite or of value in settling the point at issue. In taking accounts, professional book-keepers may be examined as experts as to the meaning of certain entries. Penmen of skill and experience may be examined as experts in regard to the genuineness of writings, etc.

## EXTORTION.

**Extortion.**—The unlawful taking by any officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due. See **CRIMES AND PUNISHMENTS.**

## EXTRADITION.

**Extradition.**—The surrender by one state to another, on its demand, of persons charged with the commission of crime within its jurisdiction, that they may be proceeded against according to law. The states of the United States surrender criminals to each other on proper demand of the governor of the state from which the person charged with crime has escaped.

**Treaties have been made between the United States and the following foreign states for the mutual surrender of persons charged with any of the crimes specified, viz :**

**Great Britain.**—Crimes—murder, assault with intent to commit murder, piracy, arson, robbery, forgery and utterance of forged paper.

**France.**—Crimes—murder, attempt to commit murder, rape, forgery, arson and embezzlement by public officers when the same is punishable with infamous punishment, burglary and robbery, forgery, utterance of forged paper and embezzlement by servants.

**Prussia, Saxony, Hesse Cassel, Hesse Darmstadt, Saxe-Weimar-Eisenach, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Brunswick, Anhalt, Dessau, Anhalt-Bernburg, Nassau, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reus-elder, Reus-junior, Lippe, Hesse-Homburg, Frankfort, Fue-Hansiatic, City of Bremen, Mecklenburg-Schwerin, Oldenburg and Schaumburg-Lippe,** deliver up persons charged with murder, assault with intent to commit murder, piracy, arson, robbery, forgery, utterance of forged paper, fabrication or circulation of counterfeit money and embezzlement of public money.

**Bavaria and Hanover.**—Crimes—the same as in the treaty with Prussia.

**Austria.**—Crimes—murder, assault with intent to commit murder, piracy, arson, robbery, forgery, fabrication or circulation of counterfeit money and embezzlement of public moneys.

**Swiss Confederation.**—Crimes—murder, attempt to commit murder, rape, forgery or the emission of forged papers, arson, robbery with violence, intimidation or forcible entry of an inhabited house, piracy, embezzlement by public officers or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

**Two Sicilies.**—Murder, attempt to commit murder, rape, piracy, arson, the making and altering of false money, forgery, robbery with violence, intimidation or forcible entry of an inhabited house, embezzlement by public officers (including appropriation of public funds), where these crimes are subject to infamous punishment.

**Hawaiian Islands.**—Crimes—murder, piracy, arson, robbery, forgery and the utterance of forged paper.

The United States has made treaties for the mutual surrender of deserters, with the following states: Austria, Belgium, Brazil, Central America, Chile, China, Columbia, Ecuador, France, Greece, Guatemala, Hanover, the Hanseatic towns, Hawaiian Islands, Mecklenburg-Schwerin, Mexico, New Granada, Peru, Portugal, Prussia, Sardinia, Two Sicilies, Spain, Sweden, Norway and Venezuela.

## EXTREMIS.

**Extremis.**—When a person is sick, beyond the hope of recovery and near death, he is said to be *in extremis*.

A Will made in this condition, if made without undue influence, by a person of sound mind, is valid.

## FACT.

**Fact.**—Fact is much used in distinction from law.

**Material Facts**, are those which are essential to the right of action or defense.

**Immaterial Facts**, are those which are not essential to the right of action or defense.

The existence of facts is generally determined by the jury, but there are many facts of which a court takes cognizance.

## FACTOR.

**Factor.**—An agent employed to sell goods, consigned, or delivered to him by a second person. His compensation is called “*factorage*” or “*commission*.” When such agent accompanies a ship on a voyage, for the purpose of disposing of the cargo, he is called a *supercargo*. Such factor may pay and sell in his own name for his principal. A broker must pay and sell in the name of his principal ; and herein is the principal difference between them.

**Domestic Factors.**—A domestic factor is one who resides in the same country with his principal ; a foreign factor is one who resides in a different country from his principal.

**Responsibility.**—When a purchase has been made by a factor, he as well as his principal is liable for the debt ; and in case of a sale, the purchaser is responsible, both to the factor and principal, for the purchase money ; but this presumption may be rebutted by proof of exclusive credit.

**His Duties.**—He must use reasonable skill and ordinary diligence in his business. When he has no instructions, he must act in his sales according to the general usages of trade ; but, if express instructions are given, he must follow them. If he has no instructions, he may give credit, if such is the usage of trade ; and, in all cases, he is entitled to the usual compensation allowed to factors engaged in the same

business, if no express contract be made; and he must account to his principal for all moneys received.

**His rights generally.**—He may sell in his own name—may recover the price in his own name, and may give receipts and discharge debtor, unless the debtor has been notified not to pay the factor. He has a lien on the goods for advances he has made on them and for his commissions. He must not barter or exchange his principal's goods when his commission is to sell, nor may he pledge them to raise money for himself or to secure money he may owe; but he may pledge them for advances made to his principal or to raise money for him; or, what is more important, to reimburse himself to the amount of *his own lien for advances on the same goods*.

**Dealing with Factor, Principal Unknown.**—Where third persons deal with the factor, *in good faith*, not knowing the name of the principal, they will be protected against all claims he may make, leaving him to deal with his factor; but, when the person dealing with the factor knows who the principal is and also the extent of authority of the factor, he must have his eyes open to the power and authority of such factor.

## FALSE IMPRISONMENT.

**False Imprisonment.**—Any unlawful restraint of a man's liberty, whether in a place made use of generally or in one used only on a particular occasion, or by words and an array of force, without bolts or bars, in any locality whatever.

**The Remedy is**, in order to be restored to liberty, by writ of *habeas corpus*, and, to recover damages for the injury by civil action. False imprisonment is also a crime. See **CRIMES AND PUNISHMENTS** and **HABEAS CORPUS**.

## FALSE RETURN.

**False Return.**—A return made by a sheriff or other ministerial officer to a writ, in which is stated a fact contrary

to the truth and injurious to one of the parties or some one having an interest in it. The officer making a false return is liable for damages to the party injured.

### FARRIER.

**Farrier.**—One who takes upon himself the public employment of shoeing horses.

Like an Innkeeper, a common carrier, and other persons who assume a *public* employment, a farrier is bound to serve the public, so far as his employment goes, and an action lies against him for refusing, when a horse is brought to him at a reasonable time, for such purpose, and he is liable for unskillfulness of himself or servant in performing such work.

### FATHER.

**Father.**—By law, the father is bound to support his children, if of sufficient ability. He is not bound by their contracts even for their necessities, unless an actual authority be proved, or a clear omission of his duty to furnish such necessities, or unless he suffer them to remain abroad with their mother, or forces them from home by hard usage. His obligation to maintain his child ceases as soon as the child becomes of age, unless the child becomes chargeable to the public as a pauper. The obligation also ceases during the minority of the child, if the child voluntarily abandons the home of his father, either for the purpose of seeking his fortune in the world or to avoid parental discipline and restraint. He is guardian of his children and entitled to their custody in preference to their mother. See MINORS.

### FEE-SIMPLE.

**Fee-simple.**—An estate. It is the largest possible estate which a man can have, being an absolute estate in perpetuity. It is where lands are given to a man and to his heirs absolutely, without any end or limitation put to the estate.

## FELON.

**Felon.**—One convicted and sentenced for a felony. A felon is infamous, and cannot fill any office or become a witness in any case unless pardoned, except in case of absolute necessity. See WITNESS.

## FINAL JUDGMENT.

**Final Judgment.**—A judgment which puts an end to the action by declaring that the plaintiff or defendant has or has not entitled himself to any relief asked in the pleadings.

Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

## FINDER

**Finder.**—One who lawfully comes to the possession of another's personal property which has been lost.

The Finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found; as, if a man were to find an animal, he would be entitled to be reimbursed for its keeping, for advertising in a reasonable manner that he had found it, and to any reward which may have been offered by the owner for the recovery of such lost thing.

In California, the finder of property lost is required by law to hand the same to the sheriff of the county where the property was found.

If the Finder knows the owner and fails to return the property to him, he is guilty of larceny.



## FIRM.

**Firm.**—The persons composing a partnership taken collectively. See PARTNERSHIP.

## FISH COMMISSIONERS.

See APPENDIX.

## FIXTURES.

**Fixtures.**—Personal chattels affixed to the real estate, which may be reserved and removed by the party who has affixed them, or by his personal representative, against the will of the owner of the land.

Questions frequently arise as to whether given appendages to a house or land are to be considered part of the real estate, or whether they are to be treated as personal property.

**The Annexation** may be actual or constructive. By annexation, is understood every mode by which a chattel can be joined or united to the freehold. The article must not be merely laid upon the ground; it must be fastened, fixed or set, into the land, or into some erection as is unquestionably part of the realty, otherwise it is in no sense a fixture. Locks, iron stoves set in brickwork, posts and window-blinds, afford examples of actual annexation. But loose, movable machinery used in prosecuting any kind of business to which the realty is adapted, cannot be considered part of the real estate nor in any way appurtenant to it.

**As between Landlord and Tenant**, the rule is that a tenant may sever at any time *before the expiration of his tenancy* and carry away all such fixtures of a chattel nature as he has himself erected upon the demised premises for the purposes of *ornament, domestic convenience or to carry on a trade: provided*, that the removal can be effected without material injury to the freehold. See LANDLORD AND TENANT.

## FOLIO.

**Folio.**—A certain number of words specified by statute as

bility that the old customers will resort to the old place. The question presented has been whether, on the death of a partner, the good will of the business went to the surviving partners or whether it was a partnership effect and, as such, liable to be accounted for by the survivors.

**In Professional Partnerships.**—So far as concerns professional partnerships, there seems to be but little doubt of its surviving, but in those which are mercantile it is sometimes of great value; and in proper cases, perhaps in all cases that admit of it, the courts will direct it to be sold, and will restrain the former owners from pursuing a business which would render it valueless to the purchasers.

**Name or Trade-mark.**—An interest somewhat analogous to good will is the right to the exclusive use of a particular name or mark upon goods and merchandise, usually known as "trade-marks." This right can only be acquired by special appropriation and undisturbed enjoyment. The name or marks to which the right attaches, must be such as designate the origin or ownership of the articles, not those merely indicating their name or quality.

**Injunction to Restrain use of Name or Trade-mark.**—A merchant or manufacturer will not be permitted to use the name or trade-mark of another, although he may be ignorant of the fact. In cases of violation of this right, the courts are usually applied to for an injunction to restrain all further use of the name or mark. In granting relief in such cases, the court does not require an exact similarity to be shown between the two marks. It is enough that one is so closely imitated from the other as to deceive the public and draw away customers.

**The Law of Trade-marks in California.**—In California, any person wishing to secure the exclusive use of any trade-mark or name, shall file his claim to the same, and a copy or description of the same, with the secretary of state. A fee of five dollars is required to be sent with trade-mark. Any imitation or violation of a trade-mark so secured, is a crime punishable by fine and imprisonment.

## FORMS.

*Sale of Good Will.*

Know all men by these presents : That for and in consideration of the sum of ..... dollars, to me in hand this day paid, by ..... , I have sold and assigned to the said ..... [or to ..... and ..... , my former partners] the "good will," custom and trade, of my business of ..... , No. .... street, city of ..... [or, if the sale is to former partners, "my interest in the 'good will,' etc., of said partnership"].

In witness whereof, etc.

*Notice of Trade-mark.*

Know all men by these presents : That I claim the following as my trade-mark : [give copy of trade-mark, if possible] and notice is hereby given that the same is my exclusive property, and all persons are forbid using the same without my authority.

In witness whereof, etc.

## GROWING CROPS.

**Growing Crops.**—Growing crops raised by the cultivation of man, are, in certain cases, personal chattels, and in others part of the realty. If planted by the owner of the land, they are part of the realty, but may, by sale, become personal chattels, if they are fit for harvest and the sale contemplates their being out and carried off, and not a right in the vendee to enter and cultivate. If a tenant plants annual crops, they are personal chattels when fit for harvest. See LANDLORD AND TENANT.

## GUARANTY.

**Guaranty and Guarantor.**—A person who is bound to another for the fulfillment of a promise of a third person, is a *guarantor*.

**Surety for Another.**—The law declares every special promise to answer for the debt, default or miscarriage, of another, to be void, unless such agreement, or some note or memorandum thereof *expressing the consideration*, be in writing and subscribed by the party charged therewith. No special form or words are necessary to such contract. If the whole contract shows clearly that A promises B to guaran-

tee the debt of C, no matter what language is used to express the contract, it will do, and the courts will sustain it. This promise is good, although not in writing, when the guarantor has some interest in the contract. That interest may be much or little, as the courts in these cases do not inquire into the extent of the interest, but the question—"Has the grantor any interest whatever?" is alone material to take the case out of the statute above quoted.

**To whom to look for Pay.**—The guarantee is entitled to receive payment, in the first place, from the debtor, and, secondly, from the guarantor. He must be careful not to give time to the debtor to pay the debt without the consent of the guarantor. If he does give time, without such consent, the guarantor is thereby discharged.

**Duty of Creditor to Sue.**—The creditor should, at the request of the guarantor, bring an action against the debtor to secure the debt, and, unless he does so, on tender of costs by the guarantor, such neglect may act also as a discharge. If the creditor declines to sue, the guarantor may pay the debt himself, and become subrogated to all the rights and securities of the creditor, and sue in his own name to secure himself. He may, also, without requesting the creditor to sue, pay the debt, take an assignment of the debt and sue in his own name.

**When Guaranty is not Binding.**—A guaranty is not binding, unless the guaranty is accepted by the creditor. This acceptance may be expressed or implied. It is best, in all cases of importance, to notify the guarantor of the acceptance of the guaranty.

**For the Law,** on the subject of indorsement, see **BILLS AND NOTES.\***

#### FORMS.

##### *Guaranty to be Indorsed on Note.*

[Date.]

For value received, I guarantee the due payment of the within note.

[Signed]

.....

\* In the states and territories of the Pacific, the courts treat a guarantor of a note or bill as an indorser, and entitled to notice of no payment.

*Guaranty of a Note on Separate Paper.*

[Date.]

For value received, I guarantee the payment of the following-described promissory note. [Full description.]

[Signed]

.....

*Letter of Guaranty.*

SIR: If you will sell to Mrs. .... of ... , [or, "the firm of," or, "..... & Co." ] all the goods she [or, "they wish "] wishes to buy, to the amount of ...., within [so many days, months or years] from date, for the consideration of one dollar paid me by the said ..... , I hereby promise and guarantee that the price agreed upon between you and the said ..... , for said goods, shall be duly paid. [This letter may also state the terms on which the said goods are to be sold ; and also, any condition the guarantor may see fit to affix to his guaranty.]

In witness, etc.

[Signed]

.....

[Date.]

*Letter of Acceptance, to be Registered at the Post-office, to insure Delivery and preserve Evidence of Receipt of same by Guarantor.*

SIR: Your letter of ...., [state fully the contents of the letter of guaranty so that there can be no mistake as to what is meant], is received, and you are hereby notified that your promise to guarantee the payment of any debt the said ..... may contract, and the payment of the price of any goods he may purchase, as stated in your letter of guaranty aforesaid, is accepted, and we will supply the said ..... any goods he may wish to purchase of us on the faith of your said promise as limited in said letter of guaranty.

In witness, etc.

[Signed]

.....

[Date.]

When Goods, stocks or securities, of any kind are given as "collaterals" for any debt, an instrument is generally given, the intention of which is to guarantee that the collateral should remain sufficient to secure the indebtedness. It may be in one of the following forms, as the bargain requires. These are sometimes called "margin guarantees":

*Guaranty with Collaterals authorizing Sale.*

Whereas, I have deposited with ..... as collateral security for payment at maturity, of the following [describe the debt guaranteed]. Now these presents witness: That in the event of the non-payment at maturity of any or all these, I hereby authorize ..... or his assigns, to sell the above described [description of collaterals], at public or private sale, or at the broker's board, without notice to me, and apply the proceeds to the payment of said debt and all necessary expenses, holding me responsible for any deficiency.

In witness, etc.

[Signed]

.....

*Guaranty with Collaterals promising Additional Security or authorizing a Sale*

Having borrowed this day of ...., the sum of ...., on the following collaterals [here describe the collaterals], I hereby agree, in case the market price of said stock shall fall at any time during the continuance of the said loan to an amount insufficient to cover the sum loaned, with .... per cent. margin added thereto, that in such event I will, on demand, deposit additional security, to be approved by him, which shall be sufficient to keep the collaterals thus deposited equal to a sum .... per cent. above said loan, and so as often as said collaterals shall diminish; and that in default thereof the said ..... shall have the power to sell at public or private sale, without notice, all or any of the said securities (as well as any others he may hold), to pay the amount of the said loan, with all interest and charges thereof, and for so doing I fully release him from all claims, actions and causes of actions, therefor which I may or might have against him.

In witness, etc.

[Signed]

..... [L.S.]

## GUARDIAN.

**Guardian.**—One who has the care and management of the person or estate, or both, of a child during its minority. The following is statutory and applicable to the Pacific coast:

**When an Infant** is a party to a suit, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof or a county judge.

**The Guardian** shall be appointed as follows:

1st. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

2d. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

**A father**, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child, and a guardian for the injury or death of his ward.

## HABEAS CORPUS.

**Who may prosecute the Writ.**—In California, Nevada and Idaho, every person unlawfully committed, detained, confined or restrained, of his liberty, under any pretense whatever, may prosecute a writ of *habeas corpus* to inquire into the cause of such imprisonment or restraint.

**Application for Writ.**—Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and shall specify:

1st. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known.

2d. If the imprisonment be alleged to be illegal, the petition must also state in what the illegality consists.

3d. The petition must be verified by the oath or affirmation of the party making the application.

**Who may grant Writ.**—Such writ may be granted by the supreme court, or any judge thereof, or any district or county court in term time, or by any judge of such courts at any time, whether in term or vacation. [In Nevada and Idaho, there are no county courts.]

**Discharge of Person detained in Custody.**—When the officer or person having the custody of the person brought up under the writ shows by his return any one of the following cases, such prisoner may be discharged:

1st. When the jurisdiction of such court or officer has been exceeded.

2d. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

3d. When the process is defective in some matter of substance required by law rendering such process void.

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4th. When the process, though proper in form, has been issued in a case not allowed by law.

5th. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6th. Where the process is not authorized by any judgment, order or decree, of any court, nor by any provision of law.

7th. Where a party has been committed on a criminal charge-without reasonable or probable cause.

FORMS.

*Petition for Writ.*

In the district court of the .... judicial district of the state of .... in and for the .... county of ....

In the matter of the application of }  
.....  
for a writ of habeas corpus. }

To the hon. ...., judge of the district court of the ..... judicial district of the state of ....., in and for the ..... county of .....

The petition of ...., respectfully shows, that ...., is unlawfully imprisoned, detained, confined and restrained, of .... liberty by ...., at ...., in the .... county of ...., in the state of .....

That the said imprisonment, detention, confinement and restraint, are illegal, and that the illegality thereof consists of this, to wit: [State cause or reason of illegal restraint or confinement].

Wherefore, your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said ....., commanding ..... to have the body of ..... before your honor at the time and place therein to be specified, to do and receive what shall then and there be considered by your honor, concerning ...., together with the time and cause of .... detention and said writ; and that ....., may be restored to .... liberty

Dated ..... 18..

State of ..... }  
..... county of ..... } ss.

....., being duly sworn says, that .... is the petitioner named in the foregoing petition, that .... has ..... read the said petition and knows the contents thereof, and that the same is true of .... own knowledge, except as to the matters which are therein stated on .... information or belief, and as to those matters that .... believes it to be true.

Subscribed and sworn to before me, this .... day of .... A.D. 18..

.....



*Order granting Writ.*

In the district court of the .... judicial district of the state of .... in and for  
the .... county of ....

In the matter of the application of }  
..... }  
for a writ of habeas corpus.

Upon reading and filing the petition of ....., duly signed and verified by ....., whereby it appears that ..... is illegally imprisoned and restrained of .... liberty by ....., at the ....., in the .... county .... of ....., in the state of ....., and stating wherein the alleged illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue. It is ordered, that a writ of *habeas corpus* issue out of and under the seal of the district court of the .... judicial district of the state of ...., in and for the .... county of ...., directed to the said ....., commanding .... to have the body of the said ....., before me, in the court-room of the said court, on the .... day of ....., A.D. 18., at .... o'clock, .M. of that day, to do and receive what shall then and there be considered concerning the said ....., together with the time and cause of .... detention, and that .... have then and there the said writ.

Dated ..... 18., ..... ,

In the district court of the .... judicial district of the state of .... in and for  
the .... county of ....

District Judge, .... District.

The people of the state of ....., to ..... , greeting:

We command you, that you have the body of .... , by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said ..... shall be called or charged, before ..... , judge of the ..... judicial district of the state of ....., at the court-room of the district court of said district, in and for the .... county of ....., on the .... day of ....., A.D. 18., at .... o'clock, in the .... noon of that day, to do and receive what shall then and there be considered concerning the said ..... And have you then and there this writ.

Witness hon. .... , judge of the said district court, at the court-room thereof, in the .... county of ....., this .... day of ....., A.D. 18..

Attest my hand and the seal of said court, the day and year last above-written.

..... ,  
Clerk.

By ..... ,  
Deputy Clerk.

## HABITUAL DRUNKARD.

**Habitual Drunkard.**—A person given to the excessive use of intoxicating drink, who had lost the power or the will, by frequent indulgences, to control his appetite for it. The

courts of California hold a person not to be an habitual drunkard who is capable of attending to his business or calling the principal part of his time. Habitual drunkenness is a ground of divorce. See DIVORCE.

## HEARSAY EVIDENCE.

**Hearsay Evidence.**—That kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also, in part, on the veracity and competency of some other person. As a general rule, such reports of transactions are not admissible in evidence. Matters relating to public interest may be proved by hearsay evidence.

## HOMESTEADS.

*An Act of Congress to secure Homesteads to Actual Settlers on the Public Domain, passed May 20th, 1862.*

**Homestead, who may Acquire.**—Section 1. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States government, or given aid and comfort to its enemies, shall, from and after the first of January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal sub-subdivisions of the public lands, and after the same shall have been surveyed: *provided*, that any person owning and residing on land may, under the

provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

**Affidavit to be Filed.**—Sec. 2. And be it further enacted, that the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *provided*, however, that no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or, in case of her death, his heirs or devisee; or, in case of a widow making such entry, her heirs or devisee, in case of her death, shall prove by two credible witnesses that he, she or they, have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the government of the United States; then, in such case, he, she or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: and *provided*, further, that in case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of said infant child or children;

and the executor, administrator or guardian, may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicil, sell said lands for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

**Register of Entries.**—Sec. 3. And be it further enacted, that the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the general land office, together with the proof upon which they have been founded.

**Exempt from Execution.**—Sec. 4. And be it further enacted, that no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

**Abandonment.**—Sec. 5. And be it further enacted, that, if at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the government

**Amount of Land.**—Sec. 6. And be it further enacted, that no individual shall be permitted to acquire title to more than one quarter section under the provisions of the act; and that the commissioner of the general land office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to re-

ceive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one-half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *provided*, that nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing pre-emption rights: and *provided*, further, that all persons who may have filed their applications for a pre-emption right prior to the passage of this act, shall be entitled to all privileges of this act: *provided*, further, that no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

**Crimes under Act.**—Sec. 7. And be it further enacted, that the fifth section of the act entitled “An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States and for other purposes,” approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations and affidavits, required or authorized by this act.

**Price may be Paid at Once, on Taking Up.**—Sec. 8. And be it further enacted, that nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price or the price to which the same may have graduated for the quantity of land so entered, at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation, as provided by existing laws granting pre-emption rights.

**Constitutional Provisions.**—Article eleven, section fifteen of the constitution of California declares, that the legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families. [Same in Nevada.] In pursuance of this provision, the legislature has passed the following statute :

*Act of April 21st, 1851, to Exempt the Homestead and other Property from Forced Sale in Certain Cases.*

[Amended April 28th, 1860, and May 12th, 1862.]

**Homestead and Extent of.**—Section 1. The homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value the sum of five thousand dollars [in Idaho, three thousand dollars], to be selected by the husband and wife or either of them, or other head of a family, shall not be subject to forced sale in execution or any final process from any court, for any debt or liability contracted or incurred after the passage of the act to which this is amendatory. Said selection shall be made by either the husband or wife or both of them, or other head of a family, declaring their intention, in writing, to claim the same as a homestead. Said declaration shall state that they or either of them are married, or if not married, that he or she is the head of a family; that they or either of them, as the case may be, are, at the time of making such declaration, residing with their family or with the person under their care and maintenance on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead; which declaration shall be signed by the party making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded, and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants [same in Nevada and Idaho, to here]; and all homesteads heretofore appropriated and acquired by husband and wife, under the act to which this act is amendatory, shall be deemed to be held by such husband and wife in joint tenancy.

**Abandonment and Alienation of.**—Sec. 2. Such exemption shall not extend to any mechanic's, laborer's or vendor's, lien lawfully obtained, nor to any mortgage or other lien lawfully taken or acquired, to secure the purchase money for said homestead. No alienation, sale, conveyance, mortgage or other lien, of or upon the homestead property shall be valid or effectual for any purpose whatever, unless the same be executed by the owner thereof, and be executed and acknowledged by the wife (if the owner be married) and the wife be a resident of this state, in the same manner as provided by law in case of the conveyance by her of her separate real property. For the purpose of making or creating such alienation, sale, conveyance, mortgage or lien, as aforesaid, it shall not be necessary that the declaration of abandonment of the homestead be executed as herein provided for, nor that the homestead property be actually abandoned. Said homestead shall be deemed to be abandoned when a declaration thereof, in writing, executed and acknowledged by the owner thereof, and executed and acknowledged by the wife, if the owner be married and the wife be a resident of this state, in the same manner as required by law in the case of the conveyance by her of her separate real property, is filed for record in the recorder's office in which the declaration of claim to the same is recorded. [In Nevada, no mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness upon the homestead property, is valid for any purpose whatever: *provided*, that a mortgage or alienation to secure or pay the purchase money is valid, if the wife signs the same and acknowledged the instrument separate and apart from her husband. If the wife be a non-resident of the state, her signature and acknowledgment shall not be necessary to any mortgage or alienation of the homestead *before it becomes the homestead of the debtor*. In Idaho, if the husband or wife leave the county where the homestead is recorded, and reside in some other county, the homestead is no longer valid.]

**Excess in Value over Five Thousand Dollars.**—Sec. 3. Whenever execution has been issued against the prop-

erty of a party claiming said property as a homestead, and the creditor in such judgment shall make oath before the county judge of the county in which such premises are situated, or before the judge of the district court thereof, that the cash value of such premises exceeds to the best of the creditor's information and belief, the sum of five thousand dollars, it shall be the duty of such judge, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers, to estimate and report as to the value of such premises; and if the same exceed said sum, whether they can be divided so as to leave the premises, amounting to the homestead exemption, without material injury. If it appear upon such report, to the satisfaction of the judge, that the premises can be thus divided, he shall order the excess to be sold under the execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this act, he shall order the entire premises to be sold, and out of the proceeds the sum of five thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution: *provided*, that no bid shall be received by the officer making the sale under five thousand dollars: and *provided*, further, that when the execution is against the husband whose wife is living, the judge may, in his discretion, direct the five thousand dollars to be deposited in court, to be paid out only upon the joint receipt of the husband and wife; while the said sum is thus deposited, it shall possess all the protection against legal process and the voluntary disposition of the husband as were the original homestead premises. [Same in Nevada and Idaho, except there is no county judge, and in Idaho, the value of exemption is three thousand dollars.]

**Homestead to vest in Survivor.**—Sec. 4. The homestead property selected by the husband and wife or either of them, according to the provisions of said act, shall, upon the death of the husband or wife, vest absolutely in the survivor and be held by the survivor as fully and amply as the same was held by them or either of them immediately preceding the death of the deceased, and shall not be subject



to the payment of any debt or liability contracted by or existing against the said husband and wife or either of them, previous to or at the time of the death of such husband or wife, except such debt or liability as the homestead was subject to at the time of the death of such husband or wife. [In Nevada and Idaho, on the death of the husband or wife the homestead is set apart for the benefit of the survivor and his or her legitimate children. If there is no survivor nor legitimate children, the property is subject to the payment of the debts of the deceased.]

**Unmarried Persons Claiming.**—No unmarried person shall be entitled to select or hold a homestead, as provided in the preceding section of said act, unless such person has the care and maintenance of his or her minor child, or of a minor brother or sister, or of a minor child of a deceased brother or sister, or of a father or mother, or of a grandfather or grandmother, or of an unmarried sister, then residing on the homestead property with such person. [Same in Nevada and Idaho.]

**Tenancies in Common.**—The California act of March 9th, 1868, allows any party entitled to a homestead under the laws of this state, who is in the exclusive occupation of any parcel of land inclosed, to claim the same as a homestead, although such claimant own only an undivided interest in such land.

The following sections of the probate act of California make provision for the family, and are found also in the statutes of Oregon, Washington, Nevada and Idaho:

**Widow to remain in Possession of Homestead.**—When a person shall die, leaving a widow or a minor child or children, the widow, child or children, shall, until letters have been granted and the inventory has been returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

**To be set Apart.**—Upon the return of the inventory or at any subsequent time during the administration, the court or probate judge may, of his own motion or on application, set apart for the use of the family of the deceased, all personal property which is by law exempt from execution and the homestead, as designated by the general homestead law.

**Allowance for Support.**—If the amount set apart be insufficient for the support of the widow and child or children, the probate court shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family according to their circumstances during the progress of the settlement of the estate; which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

**Allowance to have Preference.**—Any allowance made by the court, in accordance with the provisions of the preceding section, shall be paid by the administrator in preference to all other charges, except funeral charges and expenses of administration.

**Disposition of Property set Apart.**—When property shall have been set apart for the use of the family, in accordance with the provisions of law, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left also a minor child or children, the one-half of such property shall belong to the widow, and the remainder to the child or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

**Where the Estate does not exceed Five Hundred Dollars.**—If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the probate court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate after the pay-

ment of the funeral charges and expenses of the administration, and there shall be no further proceedings in the administration unless further estate be discovered; and when it shall appear that the value of the whole estate does not exceed the sum of one thousand dollars, it shall be in the discretion of the probate court to dispense with the regular proceedings or any part thereof prescribed in this act, for the purpose of the summary administration of the estate, and to order distribution of the estate at the end of six months after the issuance of letters: *provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice. [In Nevada, the probate business is performed by the district judges.]

**Where Widow has Property.**—If a widow has a maintenance derived from her own property equal to the portion set apart to her by law, the whole property thus set apart shall go to the minor child or children.

#### FORMS.

##### *Declaration of Homestead.*

Know all men by these presents: That I, . . . . ., of the county of . . . ., state of . . . . ., do hereby certify and declare that I am married, and that I do now, at the time of making this declaration, reside with my family on the lot of land and premises situate, lying and being, in the county of . . . ., state of . . . ., bounded and described as follows, to wit: [description]. And that it is my intention to use and claim the said lot of land and premises, together with the dwelling-house thereon and its appurtenances, as a homestead; and I do hereby select and claim the same as a homestead, under the provisions of an act of the legislature of the state [or, "territory"] of . . . ., entitled "An act to exempt the homestead and other property from forced sale in certain cases," passed April 21st, 1851, and of the several acts amendatory thereof and supplementary thereto.

In witness whereof I have hereunto set my hand and seal, this . . . . day of . . . ., one thousand eight hundred and . . . . .

..... [L.S.]

##### *Declaration of Abandonment of Homestead.*

Know all men by these presents: That we, . . . . . and . . . . ., his wife, of the city and county of . . . . ., state of . . . . ., do hereby abandon, release and discharge, from any and all claim by us as a homestead, the lot of land and premises situate, lying and being, in the city and

county of ....., state of ..... bounded and described as follows, to wit: [description]. Together with the tenements and appurtenances thereunto belonging.

In witness whereof, we have hereunto set our hands and seals, this .... day of ....., A.D. 18..

..... [L.S.]  
..... {L.S.]

## HOUSEHOLD.

**Household.**—Those who dwell under the same roof and constitute a family. It is not necessary that they should be under a roof, or that the father of a family be with it, if the mother and children keep together so as to constitute a family.

## HOUSEHOLDER.

**Householder.**—Mother or chief of a family; one who keeps house with his family. A keeper of a tavern or boarding-house, or a master or mistress of a dwelling-house. A person having and providing for a household.

## HUSBAND AND WIFE.

**Husband and Wife, how regarded by the Law.**—The relation of husband and wife is regarded by the law purely as a civil contract, and as such, in order to make it binding, it must be characterized, in the main, by the same essentials requisite to the validity of other contracts. Hence, the consent of parties legally competent to contract is necessary.

The chief peculiarity which distinguishes this from other contracts is, that it continues during the lives of the parties, and cannot be dissolved by mutual consent, but only for certain specific causes, defined by law; yet it may be suspended by agreement of the parties. See SEPARATION.

**Statutory Provisions.**—By the statutes of California,\*

\* The following act applies to California alone:

*An Act to Protect the Rights of Married Woman in certain Cases.*

Section 1. The earnings of the wife shall not be liable for the debts of the husband.

Sec. 2. The earnings and accumulations of the wife and of her minor chil-

Nevada and Idaho, the right is conferred upon the wife to hold separate property, to carry on business as a *femme sole*, to make conveyances in certain cases and to exercise other powers.

The act or law regulating marriages, provides substantially as follows:

1st. Marriage is considered, in law, as a civil contract, to which the consent of the parties is essential.

2d. All marriages between persons within certain degrees of kindred are declared to be incestuous and void.

3d. All marriages of white persons with negroes or mulattoes are declared to be illegal and void. [In Idaho, the same,

dren living with or being in her custody while the wife is living separate and apart from her husband, shall be the separate property of the wife.

Sec. 3. The wife, while living separate and apart from her husband, shall have the sole and exclusive control of her separate property, and may sue and be sued, without joining or being joined with her husband, and may avail herself of and be subject to all legal process in all actions, including actions concerning her real estate.

Sec. 4. The wife, while living separate and apart from her husband, may sue, and by her deed, without joining with her husband, convey her real estate as hereinafter provided: 1st. Before such sale and conveyance she shall cause to be recorded in the office of the recorder of the county where the real estate to be sold is situated, a declaration, duly verified and acknowledged before an officer authorized by law to take acknowledgment of deeds, containing a description of such real estate, the name of her husband, her own place of residence and that she is a married woman living separate and apart from her husband. 2d. Upon filing in the county court of the proper county her petition, duly verified, containing a substantial copy of such record and showing that she is still living separate and apart from her husband, and intends to sell any part or the whole of such real estate, describing the same, such court or the judge thereof shall appoint a day for the hearing of the matter, not less than thirty days from the date of the filing of such petition, and may direct such notice of such hearing to be given by publication in some newspaper or otherwise, as to such court or judge may seem proper, the same not to be more than three weeks; and upon such hearing, if it appear that the foregoing provisions have been complied with, the court shall, if it so appear in proof, adjudge "that such person is a married woman, living separate and apart from her husband, and is authorized to sell and convey any or all of her real estate in such petition described," which judgment shall be final and conclusive of the matters contained therein.

Sec. 5. All acts and parts of acts, so far as they conflict with the provisions of this act are hereby repealed.

Sec. 6. This act shall take effect immediately.

and including Indians and Chinese. Nevada the same as Idaho.]

4th. Whoever shall contract marriage in fact, contrary to the two foregoing prohibitions, and whoever shall solemnize any such marriage, shall be deemed guilty of a misdemeanor punishable by fine, imprisonment, or both.

5th. All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this state.

6th. Judges, justices of the peace, clergymen of all denominations and licensed preachers, may perform the marriage ceremony. [Same in Idaho, including governor of territory; Nevada the same as California.]

**License, Age and Penalty.**—No persons shall be joined in marriage, unless such persons shall have first obtained a license therefor from the clerk of the county court of the county where such marriage is to take place, which license shall authorize any judge, justice of the peace, clergyman or preacher of the gospel, to celebrate and certify such marriage; but no such license shall be granted for the marriage of any male under twenty-one years of age, or for any female under the age of eighteen years, without the consent of his or her father, or, if he be dead or incapable, of his or her mother or guardian, to be noted in such license, or unless the party or parties under said ages respectively shall have been previously married; and, if any clerk shall issue a license for the marriage of any such minor, without consent, as aforesaid, he shall forfeit and pay a sum not less than one hundred dollars nor more than one thousand dollars, to the use of such father, mother or guardian, to be sued for and recovered in any court having cognizance thereof; and, for the purpose of ascertaining the age of the parties, such clerk is hereby authorized to examine either party or other witnesses, on oath; and the clerk shall be entitled to receive for such certificate the sum of two dollars, one-half of which he shall pay to the recorder of the county for recording the license and certificate, except in

counties where the clerk and recorders receive salaries, then he shall pay the two dollars to the county treasurer: *provided*, unmarried persons living and cohabiting together as husband and wife may be married without license or public record thereof: *provided*, the clergyman performing the ceremony shall make a record thereof in the church register. [In Idaho, the age of consent is the same, but no license is required. Nevada the same as California, except males of the age of eighteen years and females of the age of sixteen years, may marry by consent of parent or guardian, and proof of such consent is required.]

**Certificate of Marriage to be filed.**—Any judge, justice of the peace, clergyman or preacher of the gospel, who shall celebrate any marriage, shall make a certificate of such marriage, and file the same, together with the license therefor, within thirty days thereafter, in the office of the county recorder in and for the county in which said marriage was celebrated; and any person neglecting or refusing to make such return within the above-required time, shall forfeit, for each and every such offense, a sum not exceeding fifty dollars, to be recovered on indictment, and paid into the common-school fund of said county; and, if any judge, justice of the peace, clergyman or preacher of the gospel, shall solemnize and join in marriage any couple without a license, as aforesaid, he shall, for every such offense, forfeit and pay a sum not exceeding five hundred dollars, to be recovered on indictment, and to be paid into the common-school fund of the county. [In Idaho and Nevada, the record must be made within three months.]

**Certificate to be Recorded.**—The recorder shall record all such certificates of marriage, together with a license, in a book to be kept for that purpose, within one month after receiving the same, and he shall be allowed to receive, for each such record, to include both certificate and license, the sum of one dollar.

**Record to be Evidence.**—The books of record of marriages are made legal evidence; also copies of the entries therein, certified by the recorder under his official seal.

**Penalty.**—A punishment of fine and imprisonment is provided for making a false return of a marriage or a return of a pretended marriage, to the recorder, or for a false record by him of any return of a marriage

**THE RIGHTS OF HUSBAND AND WIFE RESPECTING PROPERTY.**

**Separate Property.**—All property, both real and personal of the wife, owned by her before marriage and that acquired afterwards, by gift, bequest, devise or descent, shall be her separate property; and all property, both real and personal, owned by the husband before marriage, and that acquired by him afterwards by gift, bequest, devise or descent, shall be his separate property.

**Common Property.**—All property acquired after the marriage, by either husband or wife, except such as may be acquired by gift, bequest, devise or descent, shall be common property.

**Inventory to be made.**—A full and complete inventory of the separate property of the wife shall be made out and signed by the wife, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of land, and recorded in the office of the recorder of the county in which the parties reside.

**If there be included in the Inventory** any real estate lying in other counties, the inventory shall also be recorded in such counties.

**How to be made Exempt.**—The filing of the inventory in the recorder's office shall be notice of the title of the wife, and all property belonging to her, included in the inventory, shall be exempt from seizure or execution for the debts of her husband.

**Husband to Manage.**—The husband shall have the management and control of the separate property of the wife during the continuance of the marriage, but no alienation, sale or conveyance, of the real property of the wife or any part thereof, or any right, title or interest, therein, and no



contract nor power of attorney concerning or relating to the same, and no lien or incumbrance created thereon shall be valid for any purpose, unless the same be made by an instrument in writing, executed by the husband and wife and acknowledged by her, as provided for in the acts concerning conveyances, in case of the conveyance of her separate real estate. The personal property of the wife shall not be sold, assigned or transferred, unless both husband and wife join in the sale, assignment or transfer, thereof, except property which she is or may be authorized by law to sell, assign or transfer, as a *femme sole*. [In Idaho, the acknowledgment must be made by a justice of the supreme court, judge of the district court, probate judge or notary public, or other person who is authorized by law to administer oaths. The wife may dispose of her personal property without her husband joining in the sale. Nevada the same as California, except money in specie, may be transferred by wife alone.]

**Shares in Corporation.**—Married women, owning shares of stock of a corporation, may transfer such stock or receipt for dividends, or give proxy or power of attorney in relation to such stock, without the signature of her husband.

**Sale by Wife of Separate Property.**—When any sale shall be made by the wife of any of her separate property, for the benefit of her husband, or when he shall have used the proceeds of such sale, with her consent in writing, it shall be deemed a gift, and neither she nor those claiming under her shall have any right to recover the same.

**Trustee of Wife.**—If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste, her separate property, she or any other person in her behalf may apply to the district court for the appointment of a trustee to take charge of and manage her separate estate; such trustee may, for good cause shown, be from time to time removed by the court and another appointed in his place. Before entering upon the discharge of his trust, he shall execute a bond, with sufficient surety or sureties to be approved by the court, for the proper performance of his duties. In case of the appointment of a

trustee for the wife, he shall account for and pay over to the husband and wife or either of them, the income and profits of the wife's estate, in such manner and proportion as the court may direct.

**Husband to Manage.**—The husband shall have the entire management and control of the common property, with the like absolute power of disposition as of his own separate estate; and the rents and profits of the separate estate of either husband or wife shall be deemed common property, unless in the case of the separate property of the wife, it shall be provided by the terms of the instrument whereby such property may have been bequeathed, devised or given, to her, that the rents and profits thereof shall be applied to her sole and separate use; in which case, the entire management and disposal of the rents and profits of such property shall belong to the wife, and shall not be liable for the debts of the husband.

**No Estate by Courtesy or Dower Allowed.**—No estate shall be allowed to the husband as tenant by courtesy, upon the decease of his wife, nor any estate in dower be allowed to the wife, upon the decease of her husband.

**Death of Husband or Wife.**—Upon the dissolution of the community by the death of the wife, the entire common property shall, without administration, go to the surviving husband. Upon the dissolution of the community by the death of the husband, one-half of the common property shall go to the surviving wife, and the other half shall be subject to the testamentary disposition of the husband; and, in absence of such disposition, shall go to his descendants, equally, if such descendants are in the same degree of kindred to the intestate, otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, shall be subject to distribution in the same manner as the separate property of the husband: *provided*, that in case of the dissolution of the community, by the death of the husband, the entire common property shall be equally subject to his debts, the family allowance and the charges and expenses of administration.

[In Idaho, on the death of either husband or wife, one-half of the common property shall go to the survivor and one-half to the descendants of the deceased. If there be no descendants, then the survivor takes all, subject to debts of deceased, in all cases. Nevada, the same as California.]

**Division of Property on Divorce.**—In case of the dissolution of the marriage, by decree of any court of competent jurisdiction, the common property shall be equally divided between the parties, and the court granting the decree shall make such order for the division of the common property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require: *provided*, that when such decree of divorce is rendered on the ground of adultery or extreme cruelty, the party found guilty thereof shall only be entitled to such portion of the common property as the court granting the decree may, in its discretion, from the facts in the case, deem just, and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion by the court below.

**Separate Property not Liable for Debts of Wife.**—The separate property of the husband shall not be liable for the debts of the wife contracted before the marriage, but the separate property of the wife shall be and continue liable for all such debts.

**Marriage Contract.**—In every marriage hereafter contracted in this state, the rights of husband and wife shall be governed by this act, unless there is a marriage contract containing stipulations contrary thereto.

**Foreign Marriages.**—The rights of husband and wife, married in this state prior to the passage of this act, or married out of this state, but who shall reside and acquire property herein, shall also be determined by the provisions of this act, with respect to such property as shall be hereafter acquired, unless so far as such provisions may be in conflict with the stipulations of any marriage contract.

**Of Marriage Contracts.**—All marriage contracts shall be

in writing, and executed and acknowledged or proved, in like manner as a conveyance of land is required to be executed and acknowledged or proved.

**When a Marriage Contract** shall be acknowledged or proved, it shall be recorded in the office of the recorder of the county in which the parties reside, and also in the office of the recorder of every county in which any real estate may be situated, which is conveyed or affected by such marriage contract.

**When any Marriage Contract** is deposited in the recorder's office for record, it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

**No Marriage Contract** shall be valid, or affect any property, except between the parties thereto, until it shall be deposited for record with the recorder of the county where the parties reside, and, if it relates to real estate in other counties, with the recorder of the county wherein such property is situated.

**Contract by Minor.**—A minor, capable of contracting matrimony, may enter into a marriage contract, and the same shall be as valid as if he was of full age: *provided*, it be assented to, in writing, by the person or persons whose consent is necessary to his marriage.

**When Contract may be Altered.**—A contract may be altered at any time before the celebration of the marriage, but not afterward.

**Descent not to be Cut Off.**—The parties to any marriage contract shall enter into no agreement, the object of which shall be to alter the legal order of descent, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, nor derogate from the rights given by law to the husband, as head of the family, or to the surviving husband or wife, as the guardian of their children.

**Husband to be Guardian of Children.**—No stipulation of any marriage contract shall be valid, which shall derogate from the rights given by law to the husband over the persons of his wife and children, or which belong to the husband as the head of the family, or to the surviving husband or wife as the guardian of their children.

**Custody of Children.**—See APPENDIX.

**THE RIGHT OF MARRIED WOMEN TO ACT AS SOLE TRADER.**

**Sole Trader.**—Married women shall have the right to carry on and transact business under their own name and on their own account, by complying with the regulations prescribed in this act.

**Notice to be given.**—Any married woman residing within this state, desirous to avail herself of the benefit of this act, shall give notice thereof by advertising in some public newspaper of general circulation in the county in which she resides, for four successive weeks: *provided*, if any newspaper be published in said county, said publication shall be made in the paper so published in said county. Such notice shall set forth that it is her intention to make application to the district court of said county, on the day therein named, for an order of said court permitting her to carry on business in her own name and on her own account, and it shall specifically set forth the nature of the business to be carried on. On the day named in the notice or at such further time as the court may appoint, on filing proof of publication, the court shall proceed to examine said applicant on oath as to the reasons which induce her to make the application; and if it appear to the court that a proper case exists, it shall make an order, which shall be entered on the minutes, that the applicant is authorized and empowered to carry on, in her own name and on her own account, the business, trade, profession or art, named in the notice; but the insolvency of the husband, apart from other causes, tending to prevent his supporting his family, shall not be deemed to be sufficient cause for granting this application. Any creditor of the husband may oppose such application, and may show that it is made for the purpose of defrauding

such creditor and preventing him from collecting his debt or will occasion such result, and if it shall so appear to the court the application shall be denied. On the hearing, witnesses may be examined on behalf of either party. Before making the order, the court or judge shall administer to the applicant the following oath: "I, A B, do, in the presence of Almighty God, truly and solemnly swear that this application is made in good faith, for the purpose of enabling me to support myself and my children (if the applicant have minor children), and not with any view to defraud, delay or hinder, any creditor or creditors of my husband; and that of the moneys so to be used in said business, not more than five hundred dollars has come, either directly or indirectly, from my husband: So help me God." A certified copy of said order, with the said oath indorsed thereon, shall be recorded in the office of the recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

**Powers and Liabilities of a Sole Trader.**—After the order has been duly made and recorded, as provided in the foregoing paragraph, the person therein named shall be entitled to carry on such business in her own name, and the property, revenues, moneys and credits, so invested shall belong exclusively to such married woman, and shall not be liable for any debts of her husband; and said married woman shall be allowed all the privileges and be liable to all legal processes now or hereafter provided by law against debtors and creditors, and may sue and be sued alone, without being joined with her husband; but nothing contained in this act shall be deemed to authorize a married woman to carry on business in her own name, when the same is managed or superintended by her husband.

**Responsibility of.**—Any married woman availing herself of the benefit of this act, shall be responsible for the maintenance of her children.

**Husband not Responsible for Debt.**—The husband of the wife availing herself of the benefit of this act, shall not be responsible for any debts contracted by her in the course

of the said business, without the especial consent of her husband, given in writing, nor shall his separate property be taken on execution for any debts contracted by her.

#### THE POWER OF MARRIED WOMEN TO CONVEY REAL ESTATE.

**Married Woman may Convey.**—A married woman of legal age, shall have power to convey and transfer lands, or any estate or interest therein, vested in or held by her in her own right, as fully and perfectly as she might or could do if single or unmarried : *provided*, the husband of such married woman be not, and for one year next preceding the execution of the instrument of conveyance by the wife, has not been, *bona fide*, residing in this state.

**Acknowledgment of Instrument.**—The execution of an instrument of conveyance by a married woman, independent of her husband, as provided in the preceding paragraph, shall be acknowledged before the district judge of the county in which the lands described in the conveyance are located, and the judge taking such acknowledgment shall, before he certify the same, be satisfied by the oaths of at least two credible, disinterested citizens of this state, that the husband of such married woman does not, and for one year next preceding the day of acknowledgment, has not resided in this state, which fact, and the names of the witnesses by whom the same was proved, shall be recited in the certificate of acknowledgment.

**Penalty.**—Any woman who shall fraudulently represent herself as a *femme sole*, and thus convey real estate which by law is required to be conveyed jointly with her husband, or place an incumbrance on such real estate, shall be deemed guilty of a felony, and shall be imprisoned for a term not exceeding ten years, or fined in a sum not exceeding one thousand dollars. See ACKNOWLEDGMENTS and HOMESTEADS.

In reference to the power of married women to make wills, see WILLS.

**INSURANCE OF LIVES FOR THE BENEFIT OF MARRIED WOMEN.**

**Married Woman may Insure.**—It shall be lawful for any married woman, by herself or in her name, or in the name of any third person, with his assent as her trustee, to cause to be insured for her sole use, the life of her husband for any definite period, or for the term of his natural life; and, in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claim of the representatives of her husband or his creditors, or of any parties claiming by, through or under, him. But when the premium, or any part thereof, paid in each year out of the funds or property of the husband shall exceed five hundred dollars, such exemption from such claims shall not apply to so much of said insurance as shall be in proportion to said excess over five hundred dollars. In case of the death of the wife before the decease of her husband, the amount of insurance may be made payable after her death to her children, for their use or, if under age, to their guardian.

**When Administratrix.**—When any unmarried woman who shall have been appointed administratrix shall marry, her marriage shall extinguish her authority. A married woman shall not be appointed administratrix.

**May make Will.**—Any married woman may dispose of all her separate estate by will; absolutely, without the consent of her husband, either express or implied, and may alter or revoke the same in like manner as a person under no disability may do; her said will to be attested, witnessed and proven, in like manner as all other wills.

**OREGON.**

**Civil Contract.**—In marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential.

**Who may Marry.**—Every male person who shall have attained the full age of eighteen years, and every female who



shall have attained the full age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent: *provided*, however, that nothing in this provision shall be construed so as to make the issue of any marriage illegitimate, if the person shall not be of lawful age.

**No Marriage shall be Contracted** while either of the parties shall have a husband or wife living; nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

**Who may Solemnize.**—Marriages may be solemnized by any justice of the peace in the county in which he is elected, and they may be solemnized throughout the state by any judge of a court of record, and by ministers of the gospel, or such other person as may be authorized by any church.

**When under Age.**—If any person intending to marry shall be under the age of twenty-one, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent in person or in writing of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living shall be given to the person solemnizing the marriage before such marriage shall take place.

**No Form Required.**—In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the judge, minister or magistrate and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

**Certificate.**—Whenever a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and the time and place of such marriage, and where the consent of the parent or guardian is necessary, stating that the same was duly given.

**Recording.**—The statute also provides for the filing and recording of certificates of marriage, in a manner substantially similar to that prescribed by the California statute.

**Penalty.**—It is further provided, that if any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall, on conviction, be fined in any sum not exceeding three hundred dollars.

**Marriage not to be Invalid, when.**—No marriage solemnized before any person professing to be a judge, justice or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed judge, justice or minister *provided*, the marriage be consummated with a full belief on the part of the persons so married or either of them, that they have been lawfully joined in marriage.

**Illegitimate Children.**—Illegitimate children become legitimized by the subsequent marriage of their parents with each other.

**Friend or Quaker.**—All marriages solemnized among the people called "friends" or "quakers," in the form heretofore practised and in use in their meetings, shall be good and valid.

#### DOWER.

**The Common Law Right of Dower** is retained, and by the statutes of Oregon, it is provided, that:

**Widow entitled to Dower.**—The widow of every deceased person shall be entitled to dower or the use, during her natural life, of one-third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

**The Widow shall be entitled to Dower** out of lands of the husband, mortgaged before marriage, as against every person, except the mortgagee and those claiming under him.

**Right may be Barred.**—A married woman may bar her right of dower, in any estate conveyed by her husband or by his guardian, if he be a minor, by joining in the deed of conveyance and acknowledging the same according to law.

**A Woman may also be Barred** of her dower in all the lands of her husband, by a jointure settled on her, with her assent before the marriage: *provided*, such jointure consists of a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit, immediately on the death of her husband.

**Woman out of State.**—A woman being an alien, shall not on that account, be barred of her dower; and any woman residing out of the state shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

**Dower in Certain Cases.**—It is further provided by the statute relating to marriage and divorce, that when the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

**Whenever an Order of Divorce** from the bonds of matrimony is granted by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all suits for a divorce, brought by a female, if a divorce be granted, the court may for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall, in its order or decree, appoint.

**Certificate to be Filed.**—It is further provided, that any person who shall join any parties in marriage, shall file a

certificate thereof in the office of the clerk of the probate court of the county in which such persons were joined in marriage, which certificate shall be recorded by the clerk and a certified copy thereof shall be evidence of such marriage.

**Will by an Unmarried Woman.**—A will by an unmarried woman shall be deemed revoked by her subsequent marriage.

**Marriage of Executrix.**—The marriage of an executrix extinguishes her powers and the letters will thereupon be revoked.

#### FORMS.

##### *Marriage Certificate.*

##### FORM FOR NEVADA.

State of Nevada, }  
county of ..... }

This is to certify that the undersigned, a justice of the peace of said county ["minister of the gospel" or "judge," as the case may be], did on the .... day of ....., A.D. 18.., join in lawful wedlock, .... and ....., with their mutual consent, in the presence of .... and ....., witnesses.

.....  
Justice of the Peace.

##### FORM FOR OREGON.

State of Oregon, }  
county of ..... } ss.

This is to certify that the undersigned minister ["priest" or "judicial officer," as the case may be], by authority of a license, bearing date the ... of ..., 18.., and issued by the county clerk of the county of ..., did on the ... day of ..., 18.., at the house of ....., in the county and state aforesaid, join in lawful wedlock, .... of the county of ..... and state of ....., and .... of the county of ..... and state of ....., with their mutual assent, in the presence of .... and ....., witnesses.

Witness my hand ....., ["judge," "justice of the peace," "minister" or "priest," as the case may be].

##### *Certificate of Marriage.*

This is to certify, that the rite of holy matrimony was celebrated between .... of ....., county, California, and .... of the same place, on the .... day of ....., 18.., at ....., by me according to the laws of the state of .....

... 1, 18...

Minister of church, judge .... or justice, as the case may be.

Witnesses:

.....  
.....

*Form of Marriage Service.*

...., will you have this woman to be your .... wife, to live together in the estate of matrimony; will you love her, comfort her, honor and keep her, in sickness and in health, and forsaking all others keep thee only unto her, so long as you both do live? [Answer] ....

...., will you have this man to be your .... husband, to live together in the estate of matrimony; will you obey him, love him, honor and keep him, in sickness and in health, and forsaking all others, keep thee only unto him, so long as you both do live? [Answer] ....

Then, by virtue of the authority in me vested by the laws of the state of ...., I now pronounce you man and wife.

*Marriage Settlement.*

This indenture, made this .... day of ...., in the year of our Lord one thousand eight hundred and ...., between .... of the .... county of ...., baker, party of the first part; ...., of the same place, spinster, party of the second part, and .... and ...., both of the same place, merchants, parties of the third part:

Whereas, a marriage is intended to be solemnized between the said .... and the said ...., and in consideration of such intended marriage the said parties have agreed to bring into settlement, for their benefit and for that of the issue of the said intended marriage, the property following, that is to say:

The said .... hath agreed so to bring into settlement [here specify what property the husband brings in].

And the said .... hath agreed so to bring into settlement [here specify what property the wife brings in].

And whereas, by two several indentures of assignment respectively, being even date herewith [or as the case may be] the said parties hereto of the first and second parts, have conveyed, assigned, transferred and set over, all and singular the said property to the parties hereto of the third part, as trustees, for the trusts and purposes hereinafter mentioned: Now, therefore, this indenture witnesseth, and the parties hereto of the third part, at the request and by and with the direction and consent of the said parties hereto of the first and second parts, do hereby respectively covenant, declare and agree, to and with the last-named parties, their executors, administrators and assigns, that they, the said parties hereto of the third part and the survivors of them, and the executors, administrators and assigns, of such survivor shall and will stand possessed of and interested in the said property so respectively assigned to them as aforesaid: To the uses upon the trusts, and to and for the ends, intents and purposes, hereinafter declared: that is to say, upon trust when and as they the said trustees shall, from time to time receive, or become entitled to receive, the said property, either to continue the same in its then present state, or, from time to time, call in and convert the same into money, and invest the proceeds thereof in any government, state or real, security in

the United States of America, and, from time to time, to vary the investment thereof, as aforesaid, at their or his direction; but every such investment or variation to be so made as expressed, to be from time to time made with the consent and by the direction of the said . . . . ., if then living, and upon trust that they the said trustees do and shall stand possessed of the said securities, to be so from time to time standing in their or his name or names as aforesaid; and of the interest, dividends, income and annual proceeds, thereof, upon trust; to pay such interest, dividends, income and annual proceeds, from time to time, to the said . . . . ., during her life, for her sole and separate use, and if she were sole and unmarried, apart from the said . . . . ., her intended husband, and not to be, in any manner, subject to his debts, control or engagements, but without power to her, the said . . . . ., to anticipate, charge or incumber, the same. And from and after the decease of her, the said . . . . ., if the said . . . . . shall survive her, then, upon trust, to pay the same interest, dividends, income and annual proceeds, to him, the said . . . . ., during his life. And from and after the decease of the survivor of the said two several parties, then to stand possessed of the principal of the same stocks, funds and securities, in trust for the child or children, if any of the said intended marriage, or for any issue of any such child or children who, at the time of the appointment hereinafter mentioned, shall have died leaving issue, then living, to be divided between or amongst them; if more than one, in such parts, shares or proportions, and to be vested and payable, at such time or times, and in such manner, as the said . . . . . and . . . . . shall, by any deed or deeds executed by them, or as the survivor of them shall, by any deed or deeds executed by him or her, or by his or her last will and testament, or by any codicil thereto, from time to time, respectively direct, limit or appoint: *provided*, nevertheless, that such powers shall not be exercised in favor of the issue of any such deceased child or children to an extent exceeding the share that their deceased parent or parents would have taken under these presents in default of any exercise of their powers of appointment by the said . . . . . and . . . . ., or the survivor of them; and in default of the exercise of the aforesaid powers of appointment, or either or any of them, or so far as such exercise, if incomplete, shall not extend, then it is hereby further declared and agreed that they, the said trustees, shall stand possessed of the aforesaid trust funds upon trust for all and every the children of the said intended marriage, to be equally divided between or amongst them, if more than one; and if one, the whole to go to such one child, the portions of such children to be vested in and payable to them, and transmissible to their issue, if any, on their respectively attaining the age of twenty-one years, or being married, whichever shall first happen, with full power for the said trustees to apply the income of their expectant shares or any part thereof, for the maintenance or education, or for the advancement in the world of any such child or children respectively during their respective minorities. And in case there shall be no child or children of the said intended marriage who shall live to attain a vested interest of the principal of the said trust funds as aforesaid, then subject to the aforesaid life interest; and after the determination thereof respectively, the said trustees shall stand possessed of the said trust funds, as follows, to wit: As to the trust funds so brought into settlement and assigned to the said trustees by the said . . . . ., in trust for

the executors, administrators or assigns, of him, the said . . . . ., in like manner as if he had then died unmarried. And as to the trust funds so brought into settlement and assigned to the said trustees by the said . . . . . upon trust for the executors, administrators and assigns, of her, the said . . . . ., in like manner as if she, the said . . . . ., had then died unmarried as aforesaid, with full power to her, the said . . . . ., to dispose of her interest therein, by will or other testamentary writing, notwithstanding her coverture; and to and for no other use, trust, end, interest or purpose, whatsoever.

And this indenture further witnesseth: That in consideration of the premises and of the said intended marriage, the said . . . . . and . . . . . do hereby covenant to and with the trustees of these presents, that in case any other moneys, property or effects, exceeding the sum of . . . dollars at any one time shall at any time hereafter accrue to or devolve upon the said . . . . . by any gift, devise, bequest or inheritance, at any time during the said marriage, that then, and in every such case, and so often as the same shall happen, she, the said . . . . ., shall and will from time to time assign, and he, the said . . . . ., shall and will concur with the said . . . . . in assigning the same unto the said trustees for the time being of these presents, to be held by them upon the trusts herein before declared concerning the property so brought into settlement by her, the said . . . . ., as aforesaid, or such and so many of them as shall be there subsisting, and capable of taking effect in like manner as if the same were originally brought into settlement as aforesaid.

*Provided*, always, and it is hereby declared and agreed, that in case at any time the trustees hereby appointed or either of them, or any future trustee or trustees of these presents shall die, be desirous of being discharged from, or refuse, decline or become incapable, to act, in the trusts hereof, then, and in every such case, it shall and may be lawful to and for the said . . . . . and . . . . ., or to and for the survivors of them, or after the decease of such survivor, then to or for the surviving or continuing trustee for the time being, or the executors or administrators of the last surviving trustee, by writing, under their, his or her, hands or hand, to appoint a new trustee or trustees of these presents from time to time, so often as the same shall happen, who shall thereupon act in the trusts thereof from time to time, either solely or jointly, with the surviving or continuing trustee or trustees for the time being, in the same manner and with the same powers as if hereby originally appointed, the said trust funds to be therefrom assigned and transferred so as to become vested in the then trustee of these presents, accordingly as often as the same shall happen: *provided*, also, and it is hereby further declared, that the said trustees, and other the trustee or trustees, for the time being of these presents, shall each of them be accountable only for his own acts and deeds and for such part of the said trust estate as shall actually come to his hands, and that he and they respectively shall not be answerable by reason of the failure of any banker or other agent, or for the insufficiency or failure of any security upon which the said trust estate, or any part thereof, shall be invested: *provided*, such securities shall be of the nature and kind hereinbefore mentioned, or for any other loss that may arise in the trusts aforesaid, save only so far as the same shall arise from his or their own willful negligence or default respectively.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

..... [L.S.]

..... [L.S.]

..... [L.S.]

Sealed and delivered in the presence of

.....

.....

*Assignment under preceding Form.*

This indenture, made this .... day of ....., in the year of our Lord one thousand eight hundred and ....., between ..... of the county of ....., state of ....., party of the first part, and ..... and ....., both of the same place, parties of the second part: Whereas, a marriage has been agreed upon and is about to be solemnized between the said ..... and ..... of the ..... of ..... aforesaid, and upon the treaty for the said marriage, it was agreed that all the property hereinafter mentioned should be assigned to the parties hereto of the second part, upon the trusts hereinafter declared concerning the same. Now this indenture witnesseth, that in pursuance of said agreement and in consideration of the premises, he, the said ....., doth hereby assign, transfer and set over, unto the said parties of the second part, their executors, administrators and assigns, all that [here give a full description of the property], and all the right, title, trust, property, claim and demand, whatsoever of him, the said ....., of, in and to, the premises hereby assigned, or expressed and intended so to be, and every part thereof, together with full power and authority to ask, demand, sue for, recover and receive, and give effectual discharges for the premises and every part thereof. To have, hold, receive and take, the premises hereby assigned or intended so to be to them, the said parties hereto of the second part, their executors, administrators or assigns. Upon trust to stand possessed of the said premises upon the trusts, and to and for the ends, intents and purposes, and with, under and subject to, the powers, provisions, declarations and agreements, of and concerning the said premises declared by and contained in a certain other indenture bearing even date herewith, and made between the said ..... of the first part, the said ..... of the second part, and the said ..... and ..... of the third part being the settlement made upon the marriage of the said ..... and ....., and he, the said ....., doth hereby irrevocably appoint the said parties hereto of the second part or the survivor of them, or the executors, administrators and assigns, of such survivor, his lawful attorney and attorneys to receive, collect and get in, the said premises so assigned, and each and every part thereof, and for him and in his behalf to give, sign and execute, full and sufficient receipts, releases, acquittances or other discharges for the same, and every part thereof, and which it is hereby declared and agreed shall fully and effectually release and discharge the person or persons paying the same from all liability to see to the application of the moneys therein expressed to be received. And lastly, the said ....., party hereto of the first part, doth hereby covenant, promise and agree, with and to the said par-



ties of the second part, their executors, administrators and assigns, that he, the said party hereto of the first part, shall and will, whenever thereunto requested, make, execute and do, all and every such assignments, assurances, acts, deeds, matters and things, for the further and better assigning, assuring and vesting, the said premises hereby assigned as aforesaid unto and in them the said parties hereto of the second part, and enabling them to receive and collect the same, to be held by them upon the trusts aforesaid as by the said parties of the second part shall from time to time be reasonably desired, advised or required.

In witness whereof, the said party of the first part to these presents hath hereunto set his hand and seal the day and year first above written.

Scaled and delivered in the presence of ..... [L.S.]

.....

.....

[N. B.—It must be expressly remembered, that in all such agreements where it is possible that real estate or the title to real estate is or may be involved, the agreements should be acknowledged before a notary.]

#### *Article of Separation between Husband and Wife.*

This indenture of three parts, made the .... day of ....., one thousand eight hundred and ....., between ....., of the city of ....., of the first part, and ....., his wife, of the second part, and ....., trustee of the said ....., of the third part: Whereas, divers disputes and unhappy differences have arisen between the said party of the first part and his said wife, for which reason they have consented and agreed to live separate and apart from each other during their natural life; therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises and in pursuance thereof, doth hereby covenant, promise and agree, to and with the said trustee and also to and with his said wife, that it shall and may be lawful for her, his said wife, at all times hereafter to live separate and apart from him; and that he shall and will allow and permit her to reside and be in such place and places, and in such family and families, and with such relations, friends and other persons, and to follow and carry on such trade or business as she may, from time to time, choose or think fit to do; and that he shall not nor will at any time sue or suffer her to be sued, for living separate and apart from him, or compel her to live with him, or sue, molest, disturb or trouble, her for living separate and apart from him, or any other person whomsoever, for receiving, entertaining or harboring, her; and that he will not, without her consent, visit her, or knowingly enter any house or place where she shall dwell, reside or be, or send or cause to be sent, any letter or message to her; nor shall or will, at any time hereafter, claim or demand any of her money, jewels, plate, clothing, household goods, furniture or stock in trade, which she now hath in her power, custody or possession, or which she shall or may at any time hereafter have, buy or procure, or which shall be devised or given to her, or that she may otherwise acquire; and that she shall and may enjoy and absolutely dispose of the same as if she were a *femme sole* and unmarried; and further, that the said party of the first part shall and will well and truly pay or cause to be paid unto her, his said wife, for and towards

her better support and maintenance, the yearly sum of . . . . dollars, free and clear of all charges and deductions whatever, for and during her natural life, at or upon the . . . . days of . . . ., . . . ., . . . . and . . . ., in each and every year during her said natural life, which the said trustee doth hereby agree to take, in full satisfaction for her support and maintenance, and all alimony whatever. And the said trustee, in consideration of the sum of one dollar, to him duly paid, doth covenant and agree to and with the said party of the first part, to indemnify and bear him harmless of and from all debts of his said wife, contracted or that may hereafter be contracted by her or on her account; and if the said parties of the first part shall be compelled to pay any such debt or debts, the said trustee hereby agrees to repay the same, on demand, to the said party of the first part, with all damage and loss that he may sustain thereby.

In witness, etc., [as in marriage settlement].

*Conveyance of Husband's Property to a Trustee for Benefit of the Wife.*

This indenture, made the . . . . day of . . . ., in the year one thousand eight hundred and . . . ., between . . . ., of, etc., of the first part, and . . . ., of, etc., of the second part, that whereas, the said party of the first part, being in solvent circumstances and desirous of making provision for his wife, . . . ., against future contingencies and for her maintenance and support, now this indenture witnesseth, that in consideration of the premises and of one dollar, lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all [description], together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof; and also, all the estate, right, title, interest, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, of, in or to, the above-described premises, and every part and parcel thereof, with the appurtenances, to have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, upon the trusts, nevertheless and to and for the uses, interests and purposes, hereinafter limited, described and declared, that is to say:

1st. In trust to lease the same and to take, collect and receive, the rents, issues and profits, thereof, and out of the same to keep the said premises in good order and repair and properly insured, and pay all taxes, assessments and charges, thereon.

2d. In trust to pay the residue of such rents, issues and income, to his said wife, . . . ., upon her sole and separate receipt, to the intent and purpose that she may enjoy, possess and have, the same free from the interference or control of any person whatsoever, during the term of her natural life.

3d. In trust to convey the said land and premises to such person as she,

the said . . . . ., by her last will and testament or instrument in the nature of a last will and testament, subscribed by her, in the presence of two competent witnesses, may direct and appoint.

And it is hereby further declared and agreed by and between the parties hereto, that upon the decease of the said . . . . ., the said above-recited trust shall cease and determine, and the said land and premises hereinbefore described, shall belong in fee simple, absolute, to such person or persons as the said . . . . ., shall so, as aforesaid, direct and appoint, and in default of such appointment the said land and premises shall revert to the said party of the first part and to his heirs, to his and their sole use and behoof forever:

*Provided*, always, nevertheless, and it is hereby expressly declared and understood by and between the parties thereto, that it shall and may be lawful, to and for the said party of the second part, his heirs and assigns, from time to time, to retain and reimburse to himself and themselves, out of the property hereby granted and assigned, all such costs, charges and expenses, as he or they may be put to in the performance or execution of the said trust or anything relating thereto.

And *provided*, also, that in case the trustee herein appointed, or any succeeding trustee or trustees of the said trust estate, to be appointed as hereinafter mentioned die, or shall neglect, decline or be incapable, to act in said trust, before the same shall be fully performed and executed, then, and as often as the same may happen, it shall and may be lawful for the said . . . . ., by any instrument of writing under hand and seal, to nominate, substitute and appoint, some other fit person or persons, to be trustee or trustees of and in the said premises, in place and stead of the trustee or trustees so dying, neglecting, declining or becoming incapable, to act as aforesaid; and, upon such nomination and appointment, the person or persons so to be appointed, shall be and stand seized of said premises with the appurtenances, in trust for the same uses, intents and purposes, and subject to the provisos and conditions hereinbefore mentioned and declared of and concerning the same. And the said . . . . ., for himself and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness, etc.

*Appointment of a New Trustee in place of one Deceased.*

Whereas, by a certain indenture, made, etc., between . . . . ., of, etc., of the first part and . . . . ., of, etc., of the second part, certain real estate therein described was conveyed to the said . . . . ., upon certain trusts therein mentioned and declared; and whereas, the said . . . . ., the trustee therein named is since deceased, and the said trusts remain unperformed and unexecuted; now, therefore, I, . . . . ., of, etc., the wife of the said . . . . ., in pursuance and performance of the power and authority therein given and reserved to me for that purpose, have nominated and appointed, and by these presents do nominate and appoint . . . . ., of, etc., to be a new trustee in place of the said . . . . ., deceased, for the trusts, and to and

for the ends, intents and purposes, therein mentioned, expressed or declared, of and concerning the same, and to and for no other use, intent or purpose, whatsoever.

In witness, etc.

*Deed of Trust for Benefit of Wife.*

This indenture, made, etc., witnesseth, etc. [as in other forms], all that certain lot, piece or parcel, of land, situate, lying and being, in said city of ....., bounded and described as follows, to wit: [here insert description] and also all and singular the household furniture, goods and chattels, now in the dwelling-house on said premises, together with all and singular the buildings, tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof; and all the right, title, interest, estate, property, possession, claim and demand, whatsoever, both at law and in equity, of the said parties of the first part, in and to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold, all and singular, the above-mentioned and described premises, household furniture, etc., together with the appurtenances unto the said party of the second part, his heirs and successors, forever, in trust, nevertheless, for the sole and separate use, benefit and behoof, of said ..... wife of said ....., her heirs and assigns, forever, free from the control and disposition, and from the debts and liabilities, of her said husband, and to collect and receive the rents, issues and profits, thereof, and pay over the same, when and as received, to said ....., to and for and to be applied to her sole and separate use, free from the control and disposition, debts and liabilities, of her said or any future husband.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

....., [L.S.]  
 ..... [L.S.]

Sealed and delivered in presence of

.....

*Inventory of Separate Property of Wife.*

Inventory of the separate property of .... }  
 ...., wife of ...., of the coun- }  
 ty of ....., state of .....

Know all men by these presents: Whereas, ..... of the county of ....., did, in and by his certain indenture, bearing date the .. day of ....., A.D. 18.., grant, bargain, sell, alien, remise, release, convey and confirm, unto me, ....., wife of ....., of the county of ....., certain real estate in the county of ....., in said indenture, and hereinafter particularly described, for the consideration in said indenture mentioned, the said property being conveyed to me by way of gift from my said husband, no valuable consideration passing therefor from me or my said husband, to the said ...., which said real estate is described as follows: [here insert description], together with the rents, issues and profits, of said premises, which are there in expressly reserved and conveyed to my sole and separate use.

And whereas, by gift or other right, I own and am possessed of certain other property, real estate, described as follows: [here insert description], and also certain personal property, to wit: [here describe the articles of personal property].

Now, therefore, I, the said . . . . ., wife of the said . . . . ., by and with the consent of my said husband, signified by his signing and executing these presents, do hereby publish, make known and declare, that the above-mentioned and described real and personal estate is my separate property, and that the foregoing is a full and complete inventory of such separate property.

In witness whereof, I and my said husband have hereunto set our respective hands and seals, this .. day of . . . ., A.D. eighteen hundred and . . . .

. . . . . [L.S.]

. . . . . [L.S.]

In presence of

. . . . .

*Declaration by a Married Woman as Sole Trader.*

To all whom it may concern :

Take notice, that I, . . . . ., wife of . . . . ., am a married woman, and reside in the county of . . . ., state of . . . ., that I am desirous of availing myself of the benefits of an act of the legislature of the said state, entitled "An act to authorize married women to transact business in their own name as sole traders," passed . . . . ., 18.., and all acts amendatory of or supplementary thereto, and for that purpose it is my intention to, and I shall, on the . . . . day of . . . ., A.D. 18.. at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, apply to the district court of the . . . . judicial district of the state of . . . . ., in and for the county of . . . . ., at the court-room of said court, in said county, for an order of said court permitting me to carry on, in said county, in my own name, and on my own account, as a sole trader, the business of a [description of business].

Dated . . . . ., this . . . . day of . . . ., A.D. 18..

*Notice of Application of Married Woman to become Sole Trader.*

Notice is hereby given that . . . . ., of the county of . . . . (wife of . . . . .), intends to make an application to the district court of the . . . . judicial district of the state of . . . ., in and for the county of . . . ., on the . . . . day of . . . ., 18.., for an order of said court permitting her to carry on business in the county of . . . ., in her own name and on her own account, pursuant to an act of the legislature of the state of . . . ., passed . . . . ., 18.., entitled "An act to authorize married women to transact business in their own name as sole traders," and of the act amendatory thereof and supplemental thereto passed . . . . ., 18... The business she intends to carry on is that of [description of business.]

## INCUMBRANCE.

**Incumbrance.**—Any right to, or interest in, land which may subsist in third persons. A mortgage or other lien is

an incumbrance on land. The vendor of land is bound to disclose incumbrances.

### INDEMNITY.

**Indemnity.**—Contracts made for the purpose of indemnifying a person for doing an act for which he could be indicted, or an agreement to compensate an officer for doing an act which is forbidden by law, or for omitting to do one which the law commands, are absolutely void.

### INDENTURE.

**Indenture.**—See DEED.

### INDICTMENT.

**Indictment.**—A written accusation against one or more persons, of a crime or misdemeanor, presented to and preferred upon oath or affirmation by a grand jury legally convoked.

An **Indictment** cannot be found without the concurring of at least twelve grand jurors; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury.

If an **Indictment** is not found the charge is dismissed, but may be presented to another grand jury, if the court directs, but not otherwise. The names of the witnesses examined shall be indorsed on the indictment.

### INDORSEMENT.

**Indorsement.**—That which is written on the back of an instrument, in writing, and which has relation to it. See **BILLS AND NOTES.**

### INJUNCTION.

**Injunction.**—A prohibitory writ, issued by authority of and under the seal of a court, to restrain a defendant from

doing an act which is deemed to be unjust or inequitable, so far as regards the rights of some other party or parties to such suit or proceedings. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, or by a county judge; and when made by a judge, may be enforced as the order of the court.

**An Injunction may be Granted in the following Cases:**

1st. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2d. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3d. When it shall appear, during the litigation, that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

On granting an Injunction, the court or judge shall require, except where the people of the state are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

If the Court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

An Injunction to suspend the general and ordinary business of a corporation shall not be granted, except by the

court or a judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of the state are a party to the proceeding.

### INNKEEPERS.

**Innkeeper, Definition of.**—An innkeeper is defined to be the “keeper of a common inn for the lodging and entertainment of travelers and passengers, their horses and attendants, for a reasonable compensation.” The inn which he keeps is defined to be a “house where a traveler is furnished with everything he has occasion for whilst on his way.”

An Innkeeper differs from the keeper of a boarding-house, in that the former holds himself out to the public as ready to receive all travelers or wayfarers that ask for accommodations, for such compensation as shall be just and reasonable; while the latter keeps only select persons, usually making with each a separate contract.

There is a corresponding difference between the guest of an inn and the boarder or lodger of a boarding-house. The former is a traveler, passenger, wayfaring man, not a friend or neighbor. The length of time he remains there, whether one hour or a month, has no effect in determining his character. If he takes lodging, leaving his horse there, and goes elsewhere to lodge, he is still a guest. The boarder or lodger, on the other hand, becomes such by the contract made with the keeper of the boarding-house, and if he comes to an inn under a special contract to board and sojourn there, and not as a traveler, he is simply a boarder, and not a guest; nor is a guest simply created by leaving goods at an inn, for which no compensation is paid, and lodging elsewhere.

**Duties and Responsibilities.**—The rights, duties, responsibilities and remedies, applying to the innkeeper and his guest, and to the boarding-house keeper and his boarder, are wholly different in their origin, nature and character. The latter are mainly governed by the contract into which



the parties enter, while the former are left to the principles of the common law.

**As an Innkeeper makes a standing offer to the public to accommodate all who call upon him for that purpose, he is bound to receive as guests, and to entertain as far as his accommodations extend, all such ordinary travelers as may desire to avail themselves of his offer.**

**Liable for Damages, When.**—By improperly refusing he may subject himself to an action for damages. He is not, however, obliged to receive or retain a guest who conducts himself disorderly, nor any one having an infectious disease, nor any one who would endanger the safety of his guests or bring his house into disrepute. The principal contract with an innkeeper relates to the accommodation of his guests, but, as accessorial to that, is also included the receiving and safe keeping of the baggage of his guests. This he is, also, bound to receive, and cannot refuse to take charge of, because of suspected persons at the inn, for whose conduct he is not willing to be responsible. He is under no obligations to entertain such persons at the inn, but it is his duty to eject them.

**When Relation of Boarder Ceases.**—A traveler who enters an inn as a guest, does not cease to be a guest by proposing to remain a given number of days, or by ascertaining the price that will be charged for his entertainment, or by paying in advance for a part or the whole of the entertainment, or paying for what he has occasion for as his wants are supplied.

**Responsibility of Innkeeper.**—The responsibility for the safe keeping of his guests' property extends equally to such as the guests have with them, in their immediate possession, at the moment of arrival at the inn, and that which subsequently arrives at the inn; and the rule is in no wise different where the property is acquired by the guests subsequent to arrival at the inn.

**When Liable as Insurer.**—The rule is, that an innkeeper is liable as an *insurer* of the goods of his guest committed

to his care. The responsibility of the innkeeper extends to all his domestics and servants, and to all the movable goods and chattels and moneys of his guests which are placed within the inn, and is therefore liable for all the losses of the property of his guests occurring within the inn, except those occasioned by the "act of God" or the public enemy, or the neglect or fraud of the guest, or the acts of his own servant.

**It is not Necessary** to show a delivery to the innkeeper in order to charge him. Goods stolen from the chamber of the guest in the inn, the innkeeper having no actual notice of them, will nevertheless render him liable. Nor would it divest him of liability if the guest had himself the key of the chamber in which he lodged, and left the door open. But if the guest be directed to put his goods in a particular chamber under lock and key, otherwise their safety would not be warranted, and it is not done, and they are stolen, the innkeeper is not responsible.

If the Guest deposits his goods in a room, making use of it as a warehouse, having the exclusive possession of it, and they are stolen, the innkeeper is not responsible.

**Burden of Proof in Actions.**—One more topic only remains to be discussed under this head, and that is the inquiry as to the burden of proof. The guest makes out his case by proving the defendant to be the keeper of a public inn; that he was there in the character of guest, and that while there in such character, his goods, being baggage or a reasonable sum of money, were lost; and their value should be proved also. The burden of proof is then upon the defendant—the fact of loss being presumptive evidence of negligence on the part of the inn-keeper or of his domestics. He may show that loss came within the excepted cases of the "act of God" or the public enemy, or that the guest was robbed by his own servant, or by one who came to the inn as the companion of the guest, or that the loss occurred through his own negligence; or he may show a release, and, in short, any fact that will tend to lessen his responsibility or show that the plaintiff should not recover.

## INSANE ASYLUM.

## CALIFORNIA.

**Where Located and How Conducted.**—The California Insane Asylum is located at Stockton, San Joaquin County, and under the management of a board of five directors, elected by the legislature in joint convention, and their term of office is four years. They must be all citizens of the city of Stockton or vicinity. Three doctors are also elected by the directors, and such constitute a board of medical examiners.

**Duty of Directors.**—It is their duty to make a careful and complete inquiry into the sanitary condition and medical management of the asylum, and report the same to the governor of the state, on or before the first day of November of each year.

**Statutory Provisions.**—The county judge of any county in this state shall, upon application of any person under oath, setting forth that any person by reason of insanity is unsafe to be at large, or is suffering under mental derangement, cause the same person to be brought before him at such time and place as he may direct; and the said county judge shall also cause to appear, at the same time and place, two respectable physicians, who shall proceed to examine the person alleged to be insane, and if said physicians, after careful examination, shall certify upon oath that the charge be correct, also to the name of the patient, age, birth-place, length of residence, state last from, previous habits, apparent cause of insanity, length of time affected, class of insanity and present condition of the person affected, as near as may be ascertained, of every lunatic person so examined, and if such judge be satisfied that such person is, by reason of insanity, unsafe to be at large, he shall direct the sheriff of the county to convey to and place in the insane asylum such lunatic person, and shall transmit a copy of the physi-

cians' certificate to the resident physician of said asylum. The county judge shall also cause inquiry to be made into the ability or inability of such insane person to bear the charge or expense for the time he may remain in the asylum, and he shall certify the result of the inquiry to the trustees of the asylum; and in those cases where the insane person possesses the ability to pay this expense, the trustees shall require a deposit at the time of admission, and from time to time, in advance, so long as the insane person remains an inmate of the asylum.

**Expense of Care.**—An indigent insane person is sent to the asylum at the expense of the county from whence he is certified, and, in the event of his death, his funeral expenses are furnished from the same source. He is treated there without charge, and is entitled to the same medical care and treatment as paying patients, and to good and wholesome diet.

**Convicts in State Prison.**—Whenever any convict confined in the state prison shall, in the opinion of the physician of the prison, be insane, and should be removed to the insane asylum, the physician shall make oath to the same before the county judge, in the county in which the said prison is located, and said judge shall summon two competent physicians to examine the alleged case of insanity, and if, in their opinion, the said convict is of unsound mind and should be removed, the judge shall send the statement of said physicians, with his opinion, to the governor, who is hereby authorized, in his discretion, to remove said convict to the state insane asylum.

**Should said Convict recover his sanity before the expiration of his term of sentence,** the resident and assistant physician of the asylum shall certify the same to the governor, who, upon the receipt of such certificate, shall order said convict to be sent back to the state prison.

**Crime by Insane Person.**—An act committed by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment or punished, for a public offense while he is insane.

**Jury Trial, etc.**—If the question of insanity arise upon the trial or upon pronouncing judgment, a jury is summoned to try and pass upon the same, and if the defendant be found to be insane, his trial or judgment is suspended until he become sane, and, if necessary, the court may order him into the keeping of the sheriff or some proper person.

**Guardian of Insane Person.**—When an insane person has property, the probate judge is authorized, after the insane person has been notified and has been produced for examination, to appoint a guardian to take charge of such insane person and of his property, and to have the control and management of the same, with like authority as a guardian for a minor.

**A Guardian may be Appointed,** in like manner and with like authority, for any person, who, by reason of extreme old age or other cause, is mentally incompetent to manage his property.

#### NEVADA.

**Secretary of State to make Arrangements.**—The secretary of state is required to make arrangements with the directors of the California Asylum for the insane, for the admission, support and care, of the insane of Nevada.

**Duty of District Judge.**—The district judge upon application under oath, setting forth that a person, by reason of insanity, is dangerous to be at large, cause said person to be brought before him, and he shall summon to appear at the same time and place two or more witnesses acquainted with the accused, who shall testify under oath as to conversation and conduct of the accused, and he shall also, at the same time and place, examine two graduates in medicine. If the case is of a recent or curable character, or if the insane person is of a homicidal, suicidal or incendiary, disposition, or if it would be dangerous to his or her life, or the lives or property of the community, for such a person to be at large, he shall direct some suitable person to convey such insane person to the capital of the state.

**Duty of Secretary of State.**—It is the duty of the secretary of state to cause such insane person to be transmitted to the insane asylum at Stockton, California.

**Further Duties of Judge.**—The judge shall inquire touching the ability of such insane person to bear the expenses of his arrest and support. If such person is able and has property, the judge shall appoint a guardian for him who shall have the care of his estate. If such insane person has not sufficient money, the judge shall order the sale of the property belonging to him or so much as may be necessary, and from the proceeds such guardian shall pay all costs and charges of the care of said insane person. If such insane person has no means but has kindred in the degree of husband or wife, or if a minor, father or mother living within the state of sufficient means, the judge shall order all costs and charges to be paid by the nearest of kin, or he may assess the same among such kindred as he may deem just and equitable, causing such charges to be paid quarterly in advance to the secretary of state. From the date of such order of the judge, such expenses and charges shall be a lien against the property of such kindred, and may be enforced as other liens against real or personal property. Whenever the means of such insane person shall be exhausted, or his kindred mentioned above become unable to pay, the said insane person shall be a charge on the state.

#### IDAHO.

**Duty of County Commissioners.**—It is the duty of the board of county commissioners in each county to contract with responsible parties for the care, protection and maintenance, of the indigent, sick, idiotic and insane, persons of their respective counties. The contractors shall give bonds and make quarterly reports to the commissioners, showing the causes and nature of the "confinement" and the expenses attendant upon their care and maintenance. Such board may levy a *per capita* tax, not to exceed two dollars for each taxable inhabitant of their respective counties, for the support of the indigent sick, idiotic and insane, persons in the county. In addition, they may levy a tax of not to exceed

one fourth of one per cent. on the value of all taxable property in the county for the same purpose.

## OREGON.

In Oregon, the care of the insane is let by contract to the keepers of a private asylum. The county sending insane persons to the asylum must bear the expense. In other respects, the law is similar to California.

## FORMS.

*Application to send a Lunatic to the Asylum.*

State of ..... }  
 .... and county of .... }

To hon. ...., county judge of said .... and county:

....., respectfully represents, that there is now in said city and county, a person named ...., who is insane and suffering under mental derangement, and is, by reason of insanity, unsafe to be at large, and is a proper subject for the insane asylum.

And the said ....., being duly sworn, deposes and says the foregoing statement is true: wherefore he prays that such action may be had as is by law required, and that the said ..... may be sent to the insane asylum at .....

Subscribed and sworn to this .... day of ...., A.D. 18.., before me,

.....,

County Judge.

We, ..... and ....., being duly sworn, do depose and say, that we are physicians, residing in said .... and county: that, at the request and in presence of ....., county judge of said .... and county, we have carefully examined ....., named in the foregoing application, and do find and so certify, that said ..... is insane, suffering under mental derangement, and by reason of insanity unsafe to be at large, and is a proper subject for the insane asylum, as set forth in said application. That, as near as can be ascertained, said ..... is ..... years old, was born in ....., ....., has been in this state one month, came here from the state of ....., his previous habits good, cause of insanity epilepsy, has been affected from early life, class of insanity dementia from epilepsy, and his present condition is quiet, physical health good.

....., M.D.

....., M.D.

Subscribed and sworn to before me, this .... day of ...., A.D. 18..

.....,

County Judge.

*Certificate on the above Application.*

The foregoing application having been duly made to me, ...., county judge of the .... and county of ....., and ....., named in said application, having this day been brought before me, and in my presence

carefully examined by ..... and ....., two respectable physicians, and they having thereupon made the foregoing certificate, by them duly subscribed and sworn to, and being myself fully satisfied of the truth of all the matters set forth in said application and certificate, I do hereby order the said ....., to be conveyed to and placed in the insane asylum at .....; and the sheriff of said .... and county is charged with the execution of this order.

Upon inquiry duly made, as by law required, I find, as the result thereof, that the said ..... has no means of paying the charges and expenses for the time he may remain at the asylum.

Witness my hand, the seal of our county court, this .... day of ....., A.D. 18..

Attest:

.....,  
County Judge.

.....,  
County Clerk.

By .....,  
Deputy County Clerk.

*Petition for Appointment of Guardian for an Insane Person.*

To the Hon. ...., county judge and judge of the probate court of the county of ....:

The petition of ...., of the .... of ...., respectfully sheweth—

That she is the sister of ....., whose maiden name was ....., and who is at present at the residence of ....., near ....., in the said .... of ....

That the said ..... is the owner and possessed or entitled to the possession of certain property; that she is insane and mentally incompetent to manage her property.

Wherefore, your petitioner prays that such proceedings may be had and taken in the premises, as may be necessary for the appointment of a guardian of the person and estate of the ....., and that such guardian be appointed.

[Signed]

.....

Sworn to, etc.

*Order for Appointing Guardian of an Insane Person.*

Probate court of said county.

In the matter of the guardianship of ....., {  
charged with insanity, }

State of ....., {  
county of ..... }

Having heretofore, upon the petition of ....., representing that the above-named ....., is insane and mentally incompetent to manage his property, and praying for the appointment of a guardian of the person and estate of the said ....., caused a notice to be given to the said ..... of the time and place of hearing the case, not less than five days before the time so appointed; and on reading and filing proof of due personal service of said notice upon said ....., After a full hearing and examination upon such petition, it appearing to the probate judge that the said ....., is insane and incapable of taking care of himself and managing his property, it is ordered that ....., of said .... county, who is hereby required to execute



to the said . . . . ., a bond, according to the statute in such cases made and provided, with sufficient sureties, to be approved by said probate judge, in the sum of . . . . dollars, be, and he is hereby appointed guardian of the person and estate of . . . . ., above-named, upon giving such bond.

[Dated.]

.....,  
County Judge.

*Order that Insane Person be Notified and be Produced before Probate Judge.*

In the matter of the insanity {  
of . . . . . }

On reading the foregoing petition, it is ordered, that the above matter come up for hearing before me at the county court room [or, "at my chambers"] in the city-hall of the county of . . . ., on the . . . day of . . . ., A.D. 18.., at . . . o'clock, . . . ., of that day, and that notice be given to the said . . . . . of the time and place of hearing the case, not less than five days before the time so appointed.

And that the said . . . . ., if able to attend, be produced before me on the hearing.

[Date.]

.....,  
County Judge.

#### *Guardians' Bond.*

Know all men by these presents, that we, . . . . ., . . . . . and . . . . ., are held and firmly bound unto . . . . ., an insane person, in the sum of . . . . dollars lawful money of the United States of America, to be paid to the said . . . . ., for which payment well and truly to be made, we bind ourselves, our executors, administrators and assigns, jointly and severally, and firmly by these presents.

Sealed with our seals, and dated this . . . day of . . ., 18..

The condition of the above obligation is such that: Whereas, application has been made to the judge of the probate court of the county of . . ., state of . . ., for the appointment of . . . . . guardian of the person and estate of the said . . . . .

Now, therefore, if the said . . . be appointed such guardian, and shall faithfully perform the duties of his trust according to law, and shall:

1st. Make a true inventory of all the estate, real and personal, of his said ward that shall come to his possession or knowledge; and shall return the same within such time as the said judge shall order.

2d. Shall dispose of and manage all such estate according to law, and for the best interest of said ward, and faithfully discharge his trust in relation thereto; and also in relation to the care, custody and education, of said ward.

3d. Shall render an account on oath of the property, estate and moneys, of said ward in his hands; and all proceeds or interest derived therefrom, and of the management and disposition of the same within one year after his appointment, and at such other times as the court shall direct.

4th. At the expiration of his trust shall settle his accounts with the probate judge, or with the said ward, if he be of full age, or his legal representatives; and shall pay over and deliver all the estate, moneys and effects, remaining in his hands or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Then this obligation shall be void and of no effect, else to remain of full force and virtue. .... [L.S.]

Sealed and delivered in the presence of .... [L.S.]

State of .....,  
..... and county of .... } ss.

..... and ....., being duly sworn, each for himself says, that he is a freholder, resident in said state, and is worth the said sum of ..... dollars over and above all his just debts and liabilities, exclusive of property exempt from execution. ....

Sworn to before me this .... day of ....., 18...

.....  
Deputy Clerk of the Probate Court.

## INSTALLMENT.

**Installment.**—A part of a debt due by contract and different from that fixed for the payment of the other part. For example: If A agrees to pay B one thousand dollars in two payments, one on the first day of January, and the other on the first day of July, each of these payments or obligations to pay is an installment.

In each Case, each installment is a separate debt so far that it may be tendered at any time, or the first may be sued for although the other shall not be due.

## INSURANCE.

**Marine, Fire and Life Insurance.**—Every business man should know the general principles governing insurance contracts. There are three kinds of insurances, *marine*, *fire* and *life*. Each of these, if discussed fully, would make a volume as large as this book. But it is a subject of such great importance, that notwithstanding the impossibility to do it justice in a work of this kind, it cannot be passed over in silence. The information given below is carefully compiled from the best authors, and as far as it goes, is correct:

**Insurer or Underwriter.**—The party insuring is called the *insurer*, or in marine policies of insurance, the *underwriter*. The party insured is called the *assured*, or more

commonly, the *insured*. The instrument embodying the contract is called the *policy of insurance*. This contract is strictly one of indemnity. The insurer undertakes, in case of loss, either partial or total, to make good all damage sustained to the amount insured.

**Risk Limited to Statements in the Policy.**—In all cases the thing or risk insured must distinctly appear in the policy, and is limited to what is therein stated. If a ship is specified, it is part of the contract and cannot be substituted for another ship. A cargo of a ship, where the cargo is insured, may be shifted from one ship to another in cases of danger, and the insurer is still liable.

**Foreign Voyages.**—A voyage from abroad may be insured with very little of the specification in description, and yet be sufficient. This often happens from necessity. The party wishing to insure may be ignorant of the name of the ship, or master or port of discharge, but the insurance will be good if the goods insured be laden in any ship or to any port. It is only necessary that the cargo should be known and identified as that insured. The subject-matter must be legal and so must the voyage; and if there be any illegality at the commencement of the voyage, the whole voyage is illegal for the purpose of insurance.

**Interest necessary to Insure.**—As regards the person insuring, the rule is that any person having an interest in any thing, may get himself insured to the extent of his interest. This is the rule in all insurance. If a person would be damaged by injury, in any manner of the thing insured, it is a certain test of insurable interest. An agent may insure the goods of his principal, and so may the mortgagor and mortgagee insure the property mortgaged; but the mortgagee can only insure to the amount of his claim.

**Re-insurance.**—By the policy of insurance the insurer acquires an insurable interest in the property insured, and he may re-insure to secure himself against loss by reason of his own insurance. By so doing he sometimes makes a profit by securing a second insurance for less rates than he received

himself. All insurance companies do so when they have more risks out than their capital can safely carry.

**Contract to be expressed in the Policy.**—The policy must express the contract entered into between the insurer and the insured. It should be in writing and signed by the insured or his agent. The value of the thing insured should be inserted in the policy, and the names of the insurer and assured. Sometimes insurance is effected in favor of *A or of whom it may concern*; and an insurance thus made by one partner will cover partnership goods, but if made in the name of one partner it will not have that effect. Where an insurance of this kind is made it will apply to the person who is intended to be insured, even if he gave no authority to effect the insurance. He may adopt it either before or after the loss.

**Perils or Risks Insured Against.**—The perils insured against are named in the policy. They are enumerated as those of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters-of-mark, reprisals, takings at sea, arrests, restraints and detainments, of all kings, princes and people, of what nation, condition or quality, soever; barratry of the master and mariners, and all other perils, losses and misfortunes, that have or shall come to the hurt or damage of the ship or cargo.

**Perils of the Sea.**—The term, “perils of the sea,” include all losses occasioned strictly by *sea damage*, such as stress of weather, wind, waves, and also in addition, what is termed the “act of God.” See ACT OF GOD.

**Special Insurance.**—The insurance may be on the ship or a particular voyage, or it may be for a time stated or for part of a voyage. In such case the loss must occur during the voyage or within the time, or no recovery can be had. These policies usually protect the ship until she is anchored twenty-four hours in the harbor where the voyage terminated. If the voyage insured be to a state or country by name, the risk ends at the first port entered for the purpose of unloading.

**Vessel deviating from Usual Course.**—If the vessel voluntarily deviates from the prescribed course, the effect is to discharge the insurer, as it is considered as enlarging the risk and substituting a new voyage in the place of one the risks of which he insured against. This is on the principle familiar to all law that a violation of a contract, when the violation is material, avoids it. This doctrine is adhered to with great strictness in marine risks. A deviation that is not voluntary does not have this effect; as, for instance, where a vessel is chased by the enemy or is driven by storms out of her course. After such deviation, to save the risk, the vessel must take the most direct course to the end of the voyage, unless the enemy is in her way or storms threaten, then she may deviate again. The very object of deviating from the way usually traveled is to save the ship and consequent loss to the underwriter.

**Character and Extent of Loss.**—When a loss occurs in insurance contracts, the first point to be settled is whether the loss be total or partial. As the instrument is one of indemnity before any remedy is applied, the character and extent of the loss must be ascertained. A loss is total when the whole thing insured is destroyed. It may not be *actually destroyed*, but if it is so injured that it can be of no use to the assured, he may *abandon* it to the insurer. If the goods or ship be damaged to more than half the value by any of the perils insured against, the insured may abandon and recover as for a total loss.

**Abandonment and Effect of.**—The effect of an abandonment, made and accepted, is to divest the property of the assured in the subject matter, and to vest it wholly in the insurer.

**Partial Loss.**—A partial loss, is where a part only of the thing insured meets with an injury, and the point most difficult to arrive at, in case of partial loss, is the amount of the injury and the sum to be paid. When the loss is total, the invoice price is considered the sum to be paid. When the loss is partial, it is estimated by appraisement.

**Payment of Premium and Return of.**—As payment in advance of the premium is always required as the condition of insurance, the assured may enforce its return in the following cases:

- 1st. Where the risk has never commenced.
- 2d. Where it turns out that the assured had no insurable interest in the subject matter either at the time of insurance or afterward.
- 3d. Where the vessel never sailed on the voyage insured.
- 4th. Where the contract of insurance was void from the commencement the premium will not be returned if the risk once commences.

#### INSURANCE, FIRE.

**Fire Insurance, Definition of.**—Fire insurance is a contract by which the insurer, in consideration of the premium, agrees to indemnify the insured against all loss or damage which may occur to his houses, buildings, furniture, etc., by means of fire happening within a prescribed period. It may be made on all species of property, real or personal, that is subject to destruction or direct damage by fire.

**Insurable Interest.**—It is essential to the contract of insurance that the insured should have a legal interest in the thing insured, the money value of which may be computed or valued. The interest must be such that it may be lost or destroyed by the risks insured against. It frequently happens that many persons have each an interest in a thing, and each may secure himself against loss by insurance, as mortgagor and mortgagee, lessor and lessee, and the like.

**Contents of Policy.**—The application for insurance should be in writing, signed by the applicant, or reduced to writing by the insurance agent. It should state all the facts relating to the property to be insured, its situation, character, value, ownership, and whether it has been insured and in what company. All questions propounded by the insurance agent must be truthfully answered. The insurer usually draws out a survey of the building which exhibits its size, division into rooms, and situation relative to other buildings. The application and survey are usually referred to in the policy,

if the risk is taken, and made part of it, and thereby become as much a part of the policy as if it had been set out in full in it, and renders all its statements *express warranties* and material facts on which the risk is based. It is, therefore, very important that the applicant for insurance should state nothing but facts in his application as he *warrants* his representations to be true.

**Time of Risk to be Stated.**—A fire policy is always on time, and the commencement and termination of the risk must be stated in the policy, and it commences and expires at the exact time stated.

**Conditions in Policy.**—Policies are usually clogged with conditions which are expressly made a part of the instrument and are construed as so many district warranties, and must be performed by the insured as a condition precedent to a right of recovery. Where the policy reads: "If the risk shall be increased by any means within the control of the insured, the insurance shall be void," or words to the like effect, and the insured erect buildings on his own premises so as to increase the risk, without permission by the insurer, it avoids the policy. But where there are no such restrictions in the policy, the insured may increase the risk by such new buildings or other improvements without invalidating the policy.

**Prohibition in Policy.**—It is a very common provision in a policy that the insured shall not use or store camphene or other inflammable materials of the like nature in the building insured. This is part of the contract, and if violated, whether the breach affects the risk or not, it avoids the policy, and even where the use or storage of the prohibited material was discontinued some time before the fire that caused the loss.

**Second or Further Insurance.**—Frequently a condition requires that if any further insurances are made on the same property, notice shall be given and the same shall be indorsed on the policy or approved in writing. If more than one policy is effected on the same property without the con-

**Payment of Premium.**—Where a loss occurs it is material to the recovery that the premium has been *actually paid*. In a recent case in California the supreme court held that even if the policy was issued and delivered to the insured he could not recover unless he could show that the premium was actually paid. It appears to be the settled law that where policies are issued without pre-payment, no recovery can be had if a loss occurs before payment. This should be generally known, as not a few merchants and others repose in fancied security on their policies of insurance, thinking delay in paying the premium can work no injury in case of loss.

**Proceedings in Case of Loss.**—Total abandonment or deducting from the expenses "one third new for old," is not known to fire insurance being confined to marine risks. The insurer is bound to the extent agreed upon by the policy and no further. Where the property is mortgaged and the debt due, and the insurance effected by the mortgagee, the insurer is bound to pay the sum insured to the mortgagee if it does not exceed the debt. If there is an excess, the better opinion is that it must be paid to the mortgagor, although very respectable authorities hold that the mortgagee may recover the insurance from the insurer and also the debt from the mortgagor. This is in effect recovering the debt twice, a proceeding our courts would not be apt to favor, and the question may be considered as still open, notwithstanding the law is different elsewhere.

**Notice of Loss to be given.**—The policy generally requires notice of loss to be immediately communicated to the insurer, and proof made of loss, stating the extent of it and the manner of its occurrence. This statement must be verified before some officer named, and furnished to the insurer. These provisions are made part of the contract and must be strictly observed by the insured that the insurer may inform himself of the facts and circumstances of the loss while *the ashes of the fire* are yet warm.



## INSURANCE, LIFE.

**Life Insurance, Definition of.**—Life insurance is a contract by which the insurer agrees, in consideration of a stated sum of money either paid down or to be paid in yearly installments, to insure the life of the insured for the benefit of his heirs or some person named. The contract may also be to pay a stated sum when the insured reaches, if he should live as long, a certain age. In the first the insurance money becomes due at the death of the insured or within a reasonable time thereafter. In the second it becomes due if the insured dies before the stated age is reached, the same as in the first. If he lives until the stated age is reached, the insurance is then due and payable.

**Benefits of Insurance.**—The following objects are sought to be attained by insurance:

**The Head of a Family**, by means of a small annual payment, can provide for those of his household in case of his death.

**Unmarried Persons** can make similar provision for friends.

**A Creditor can Insure** the life of his debtor, and thus create security for the debt.

**A Man may Strengthen** his own credit by insuring his life for the benefit of his creditors and assigning the policy to them.

**Insurable Interest.**—The law requires the insurer to have some interest in the life of the insured. A stranger, without he be a creditor, cannot insure the life of a person, as that would be a mere "gambling contract" which is never tolerated in law. The classes enumerated in the preceding paragraph, as we have seen, have insurable interests in the life of the insured. A father has no insurable interest in the life of a child, unless it be a pecuniary interest, but the child has in the life of its father, as it looks to him for support. A single woman may insure the life of a brother if

she depends on him for support. In California, a wife may insure the life of her husband, and she takes the insurance against creditors. See HUSBAND AND WIFE.

**Contract of Insurance, on What Based.**—The contract of insurance is made upon the strength of certain answers to questions propounded by the insurer, and upon the report of the physician of the company. The questions have especial reference to the health of the insured, and the diseases, if any, to which he is or has been subject. These questions must be truthfully answered, as the answers become part of the contract, and are in the nature of a warranty, if inserted in the policy. If they are not referred to in the policy, they stand as representations, and must be material to avoid the policy. These objections are, in theory, always made by the insurer; but, in one novel case in California, the widow of a minister of the gospel refused to take the insurance on her deceased husband's life, because he had *misrepresented* the facts when he applied for insurance.

**Assignability of Life Insurance.**—Life insurance policies are assignable the same as other contracts, and the assignee is entitled to recover, no matter what the consideration of the assignment was; and it is not necessary that the assignee should have an insurable interest in the life of the insured, to entitle him to recover. When a valid assignment is proved, the right to recover follows. In these cases, it can make no difference to the insurer who pays the premium, so long as it is regularly paid after the issuance of the policy.

**Proof of Death of Insured.**—The death of the insured must be proved, either directly or by presumption, by the party averring it. In most cases, it can be proved by witnesses who have seen the dead body; but, where such proof cannot be had, facts that leave no reasonable doubt of the death may be shown, as, the loss of the ship in which he sailed, etc.

Where a person has not been heard of for seven years, the law, in such case, presumes him to be dead.

**Forfeiture of Policy.**—Where a policy stipulates that non-payment of the yearly or other premium shall work a forfeiture, the same will be good, and a neglect to pay, forfeits all that has been paid. If the insurer, after forfeiture, accepts payment of the premium, the forfeiture is relieved, and the policy is good until it is again forfeited.

## INSURANCE, ACCIDENTS.

**Insurance against Accidents.**—Frequently, policies are issued against accidents occurring within a certain time or on a certain journey. These policies are usually issued to any person who applies, and the premium regulated according as the employment or journey is more or less dangerous.

## FORMS.

*Notice of Loss.*

To the ..... fire insurance co.:

Please take notice, that on the ..... [or, "night"] of ....., 18.., a fire broke out in the building known as ..... [or, "No. ....," or otherwise describe the premises, following the description in the policy], whereon, I am insured by your company, in the sum of ..... dollars; as per policy issued to me, No. ...., and dated ....., 18.. I do not know what caused the fire or where it caught, nor is it possible for me to ascertain. [If known it should be stated.]

Said house [or, "other building"] was totally destroyed [or, "partly"] by said fire, and I hereby claim a payment from you of the total sum guaranteed by said policy

Dated ....., 16..

Signed,

.....

Witness to sending,

.....  
.....  
.....

*To be used when the Policy requires a Sworn Statement of the Facts and Circumstances of the Loss.*

To the ..... fire insurance co.:

Whereas, the said ..... insurance company, by their policy No. ...., dated ....., 18.., insured me against loss by fire, in the sum of ..... dollars, on the following described building [or, "other property"], [here describe property insured as described in the policy]. Now I, the said ..... being the person insured in said policy, having been first duly sworn do depose and say: That on the .... day of ....., 18.., between the hours of .... and ....., a fire broke out in said building, whereby the same was greatly damaged [or, "was destroyed," or if the insurance is on personal property, in a building destroyed [state the facts regarding such destruction]; and said

fire was according to my knowledge and belief caused by [state the cause of fire if possible, if not, so state], and I aver that the said fire was not caused by me or my design or concurrence, or with any previous knowledge on my part, or in any manner attributable to me or to my agency.

That at the time of said fire I was interested in said property, in the manner following, that is to say [here state the interest of the insured]:

That there was no other insurance on said property [if there was, state the name of company and the sum].

That the occupants of the building at the time of said fire, were as follows: [here give names of tenants.]

That to the best of my knowledge the said building was worth, as it stood the day previous to the fire the sum of ..... dollars. [If the property was personal, give schedule, if possible.]

That the whole of said value was lost by said fire, and being more than the sum issued thereon, I hereby give notice that I claim of your said company the sum of .... dollars, being the sum guaranteed by you in said policy. [If personal property state the amount of loss and make claim, etc.]

Witness my hand, this .... day of ...., 18.. Signed,

State of ..... }  
county of ..... } ss.

[Name of affidavit], being duly sworn, deposes and says, that he has read the foregoing affidavit and knows the contents thereof, and that the same is true of his own knowledge, except as those matters and things therein stated upon his information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me, this ..... day of .... 18..

Notary Public.

#### *Assignment of Policy to be Endorsed thereon.*

[See, further, ASSIGNMENT and FORMS.]

I hereby, for the sum of one dollar paid me, sell and assign to ..... the within policy of insurance, and all the right and interest which I now or may hereafter have in the same.\*

Witness my hand, etc

Signed,

## INTEREST.

### CALIFORNIA.

**Legal Interest.**—Where there is no express contract in writing, fixing a different rate of interest, interest shall be

\* We have heretofore called attention to the necessity of obtaining the assent of the insurer to the assignment; and as soon as such consent has been obtained and the assignment had, notice must be given to the insurer or his agent, of the same, so he may make the proper entries of such transfer in his books

allowed at the rate of ten per cent. per annum for all moneys, after they become due on any bond, bill, promissory note, or other instrument of writing; and for money due on the settlement of accounts from the day on which the balance is ascertained, and for money received for the use of another, and the rate of interest on any judgment recovered before any court in this state, for money lent, shall be seven per cent. per annum.

**Agreement of Parties.**—Parties may agree, in writing, for the payment of any rate of interest whatever, on money due or to become due, and it shall be allowed, according to the terms thereof, until the entrance of judgment thereon; but, whatever may be the rate of interest agreed upon, no judgment or decree in any court of this state shall draw interest at a rate to exceed seven per cent. per annum.

#### OREGON.

**Rate Allowed.**—Ten per cent. per annum is allowed when there is no contract to pay more, but in no case to exceed one per cent. per month. If a greater sum has been contracted for, the whole debt is forfeited to the school fund. Judgments bear the interest the contract sued on bore, but in no case to exceed twelve per cent. per annum.

#### NEVADA AND IDAHO.

Where there is no other Contract, ten per cent. per year is allowed. Parties are at liberty to agree on any rate; and all judgments shall conform to the rate stipulated in the contract sued on, and bear the same interest.

### INTERNAL REVENUE.

**Internal Revenue.**—The taxes laid by the various acts, providing for the raising revenue by taxation, in which are included the direct tax act of August 6th, 1861; the excise tax of July 14th, 1862; the amendatory acts of March 3d, 1863; the acts of June, 1864; March, 1865; the amended acts of July 20th, 1866, and March, 1867, are intended to have specific action on several different classes. These may be divided, properly, into two general classes, viz. :

1st. The annual lists, which are subdivided into licenses, articles in schedule A (embracing carriages, yachts, billiard tables and plate), and annual income; and

2d. The quarterly and monthly lists, which include returns of auction sales; receipts of railroads, steamboats, etc., for transportation, etc.; passports, theaters, operas, circuses and museums; lotteries, dividends, advertisements, legacies, canal and turnpike companies, receipts of ferry-boats, gross receipts of express and telegraph companies, banks and insurance companies, proprietary articles, stamps under schedule B, manufacturers' returns, distillers' and brewers' returns, and returns of coal oil distillation.

For each of these Returns, under the second general class, there are specific forms and instructions furnished by the government, and it will, therefore, be unnecessary for us to give instructions and directions which are furnished already to the parties interested.

But in regard to the first general class, some explanations and instructions are desirable to enable them to act understandingly in the payment of their taxes, and these we give from the highest official authority.

Licenses must be taken out by claim agents and agents for procuring patents, insurance agents (domestic and foreign), real estate agents, apothecaries, architects and civil engineers, assayers, auctioneers, banks and bankers, bowling alleys and billiard rooms, brewers, barges, boats and flats, brokers, commercial brokers, custom-house brokers, cattle brokers, pawnbrokers, land-warrant brokers, produce brokers, butchers, builders and contractors, circuses, coal-oil distillers, coffee roasters, confectioners, conveyancers, concert halls, wholesale and retail dealers in liquors, dealers in other merchandise and wholesale dealers in the same, horse dealers, lottery ticket dealers, patent right dealers, dentists, distillers, eating-houses, express agents and carriers, exhibitions or shows for money, gasfitters, gift enterprises, grinders of coffee or spices, hotels, inns or taverns, intelligence offices, jacks, jugglers, lawyers, livery-stable

keepers, manufacturers, miners, museums, passenger steamers and vessels, peddlers, photographers, physicians, plumbers, rectifiers, stallions, surgeons, theaters, tobacconists, and by any person, firm or corporation, engaged in any business, trade or profession, whatever, having an income exceeding two thousand dollars per annum, for which no other license is required.

#### SPECIAL PROVISIONS.

1st. That in every case where more than one of the pursuits, employments or occupations, hereinafter described, shall be pursued or carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rates severally prescribed: *Provided*, That in cities and towns having a less population than six thousand persons, according to the last preceding census, one special tax shall be held to embrace the business of land-warrant brokers, claim agents and real estate agents, upon payment of the highest rate of tax applicable to either one of said pursuits.

2d. That any number of persons, except lawyers, conveyancers, claim agents, patent agents, physicians, surgeons, dentists, cattle brokers, horse dealers and peddlers, doing business in copartnership at any one place, shall be required to pay but one special tax for such copartnership.

3d. That the special tax shall not be imposed upon apothecaries, confectioners, butchers, keepers of eating-houses, hotels, inns, or taverns, or retail dealers, except retail dealers in spirituous and malt liquors, when their annual gross receipts shall not exceed the sum of one thousand dollars, any provision of law to the contrary, notwithstanding.

4th. That nothing contained in the preceding sections of this act shall be construed to impose a special tax upon vintners who sell wine of their own growth at the place where the same is made; nor upon apothecaries, as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines; nor shall physicians be taxed for keeping on hand medicines solely for the

purpose of making up their own prescriptions for their own patients; nor shall farmers be taxed as manufacturers or producers for making butter or cheese with milk from their own cows, or for any other farm products.

**All Licenses** expire on the first of May, and hence when a license is taken out at any other time in the year, it is necessary only to pay the proportion of the license which will be due to the succeeding May. If a license is not taken out or renewed by the person whose duty it is to have a license, the assessor or assistant assessor must enter his name for a license on the assessment book, and he will be liable to pay three times the amount of his license, under section fifty-nine, of the excise tax act or a fine of one hundred dollars, under section eleven of the same act.

**Article under Schedule A.**—These comprise, as above stated, carriages, yachts, gold watches, pianos, organs, melodeons or other parlor musical instruments, billiard-tables kept for private use and gold and silver plate.

**The list of these** must be furnished to the assessor, in *ten* days after the service of the notice with the blank form for the return. The penalty of furnishing a false or fraudulent list is five hundred dollars, and a neglect or refusal to furnish the list incurs the penalty of an addition of fifty per cent. to the tax and a fine of one hundred dollars. Billiard tables kept for hire and paying a license, are not subjected to this tax (decision October 21st, 1862). Forty ounces troy of silver kept for sale, and that which is in possession of a family or its members, as souvenirs or keepsakes (decision twenty-first of October, 1862), and all plate belonging to religious societies, are exempt from this tax.

The following table may be used in converting avoirdupois into troy ounces:

11	ounces	avoirdupois	equal	10	ounces	troy.
22	"	"	"	20	"	"
44	"	"	"	40	"	"
50	"	"	"	46	"	"
60	"	"	"	55	"	"
70	"	"	"	64	"	"
80	"	"	"	73	"	"



90	ounces	avoirdupois	equal	82	ounces	troy,
100	"	"	"	91	"	"
200	"	"	"	182	"	"
500	"	"	"	456	"	"
1000	"	"	"	912	"	"

Every person will be taxed at the rate of five per cent., when his or her annual gains, profits or income exceed two thousand dollars. The deductions apply to all incomes. They are:

1st. The two thousand dollars allowed by law.

2d. Other national, state and local taxes assessed for the year and paid.

3d. Rent actually paid for the dwelling-house or estate occupied by the person assessed; and in case the person assessed is boarding, the rent allowed for the rooms he and his family occupy, where such rooms are used as a home or living-place for the residence, lodging and feeding of his family.

4th. Necessary repairs to property yielding the income; or insurance thereon; or pay and subsistence for hired laborers or clerks and their subsistence, employed in conducting the business; or rent of store, shop or manufactory; fuel, freight, etc., for store, shop, etc.; or interest on encumbrances upon the property; or all, as the case may be.

5th. Income arising from interest on bonds or other evidences of debt of any railroad company or corporation, or from interest or dividends on stock, capital or deposits, in any bank, trust company, or savings institution, insurance or railroad company, from which five per cent. was withheld by the officers thereof for the excise tax.

6th. Income from advertisements on which the three per cent. duty has been paid is also to be deducted. Every person in the second class will be taxed at the rate of ten per cent., whatever may be his or her annual gains, profits or income from property, securities and stocks owned in the United States, without other deductions than numbers second and fourth above-stated. Wherever husband and wife live together and their taxable income is in excess of two thousand dollars, they will be entitled to but one deduction

of two thousand dollars, that being the average fixed by law as an estimated commutation for the expense of maintaining a family. Where they live apart, by divorce or under contract of separation, they will be taxed separately and be each entitled to a deduction of six hundred dollars.

**Officers in the civil, military or naval service** of the United States are not required to pay an income tax to the collectors on their salaries or wages, whatever may be the amount, because the government deducts five per cent. therefrom at the time of payment; but other income of such persons is liable to the income tax.

**Guardians and Trustees**, whether such trustees are so by virtue of their office as executors, administrators or other fiduciary capacity, are required to make return of the income belonging to minors or other persons, which may be held in trust as aforesaid; and the income tax will be assessed upon the amount returned after deducting such sums as are exempted from the income tax, as aforesaid: *Provided*, that the exemption of two thousand dollars, under section ninety, of the excise law, shall not be allowed on account of any minor or other beneficiary of a trust, except upon the statement of the guardian or trustee, made under oath, that the minor or beneficiary has no other income from which the said amount of two thousand dollars may be exempted and deducted.

**Whenever persons liable to assessment of income tax** shall make and tender lists which shall not be accepted by the assistant assessor as just and proper, it is the duty of such assistant assessor to make lists for such persons according to the best information he can obtain. Persons so assessed may make oath or affirmation as to the amount of income and deductions therefrom.

**Persons receiving rent** may deduct therefrom the amount paid for the necessary repairs, insurance and interest on encumbrances upon such rented property. The cost of new structures or improvements to buildings, is not to be deducted from the income. Repairs to sewers, etc., may be

deducted, but the cost of constructing them or the assessment therefor being in the nature of improvements upon the property, cannot be deducted.

**Profits or Dividends** derived from stock, shares or property in gas, bridge, express, telegraph, steamboat, ferry-boat or manufacturing companies or corporations, are subject to income tax.

**Farm Produce** which the producer has on hand on the thirty-first day of December, must be appraised at its market value on that day; but the farmer is allowed to deduct therefrom the subsistence of horses, mules, oxen and cattle used exclusively in the carrying on of said farm. Fertilizers, as guano, poudrette, plaster, etc., purchased by farmers to maintain their land in present productive condition will be considered as "repairs," and may be deducted in estimating income.

**A Merchant's Return** of income should cover the business of the year ending December 31st, excluding previous years. Uncollected accounts must be estimated. Debts considered hopelessly lost on the thirty-first of December, and due to the business of the year which closes on that day, may be deducted from the profits of the business; if subsequently paid, they must be included in the return for the year in which paid. Old debts, formerly considered lost, but paid within the year, must be reckoned a part of the income. Losses incurred in the prosecution of business are a fair offset to gains derived from business, but not to those portions of income derived from fixed investments, such as bonds, mortgages, rents and the like. Property used in business and furnishing profits, when destroyed by fire may be restored, at the expense of those profits, to the condition when destroyed; if insured, the difference between insurance received and amount expended in restoration will be allowed.

**Interest on Borrowed Capital** used in business may be deducted from income. No deduction can be allowed from

the taxable income of a merchant for compensation paid for the services of a minor son.

**The Income Tax** is assessed upon the actual income of individuals. Firms, as such, will not make returns.

**The Income Tax** must be assessed and paid in the district in which the assessed person resides. The place where a person votes, or is entitled to vote, is deemed his residence. When not a voter, the place where tax on personal property is paid is held to be the place of residence.

In **Cases of limited partnerships**, formed with the condition that no dividend or division of profits shall be made until the expiration of the partnership, each member of such firm will be required to return his share of the annual profits arising from such business, as, had they so desired, a division of the profits could have been made.

**Physicians and Lawyers** should include actual receipts for services rendered during the year ending December 31st, together with an estimate of unrealized or contingent income due to that year.

**Dividends and Interest** payable in a given year should be returned as income for that year, no matter when declared.

**Income derived from coal mines**, or the rent of coal mines, must be returned for tax, although a tax had been previously paid on the coal produced. No deduction can be made because of the diminished value, actual or supposed, of the coal vein or bed, by the process of mining.

**Premiums paid for life insurance** cannot be allowed as a deduction in a statement of income.

**Pensions received from the United States government** must be returned with other income subject to taxation, and pays three or five per cent., like other income.

**Where Income** is derived partly from United States securities, and partly from other sources, the one thousand dollars, and other allowances made by law, shall be deducted, as far as possible, from that portion of income de-

rived from other sources, and subject to three or five per cent. tax.

Interest should be considered as income only when paid, unless it is collectable and remains unpaid by the consent or agreement of the creditor.

The increased Value given to a new building by permanent improvements will be charged to capital—not income.

The Contingent Fund of manufacturing corporations made up during the year and not distributed, should not be returned as part of the income of the stockholders.

The Income of literary, scientific or other charitable institutions in the hands of trustees or others, is not subject to income tax.

If a Planter returns all his farm products, he will be allowed to deduct the actual expense of subsisting and clothing his help.

Legatees are not required to return their legacies as income. There is a special tax on legacies of personal property.

The Profits of a manufacturer from his business are not exempt from income tax, in consequence of his having paid the excise tax imposed by law upon articles manufactured by him.

Timber or Wood cut from a wood lot for sale is liable to income tax, on the receipt of the money for its sale. The amount of income accruing from it must be ascertained by assessing the value of the land after the removal of the timber or firewood, and adding thereto the sum received from the sale of the timber or wood, and from the sum thus obtained deducting the estimated value of the land on the thirty-first of December next ensuing. In cases where assessors have good reason to believe that persons have not an income of two thousand dollars, no return need be required.

Assessors have no authority to prescribe rules to be observed by merchants and others for ascertaining the amount

of income derived from their business. If, however, the assessor or assistant assessor has good reason to believe that any return is understated, he may increase the same to such sum as he thinks proper, and if the party is not satisfied, he may obtain relief by making oath to the amount on which he is liable to income duty, and such sworn return is to be accepted by the assessor.

**All Foreigners** resident in the United States will be required to make return of and pay income tax upon that portion of their income derived from sources within the United States, and from investments elsewhere, other than in real estate.

**Amounts paid for water-rents** are not to be considered as taxes, nor are they to be allowed as deductions from income.

**The Income Tax** is entirely independent and irrespective of the license tax, and is imposed upon that portion of the entire sum which exceeds two thousand dollars, after making deductions allowed by law.

**Fathers** should include salaries or wages received by minor children in returns of income.

**The Owner of a Ship** should return, as income, the entire earnings of the ship received during the year for which the tax is paid, no matter when the voyage commenced. In the case of a whole ship, the total yield, if received during the year, even if her voyage had lasted two, three, or four years, must be reckoned.

**A person engaged in navigation and owning vessels**, may balance the gains and losses on this branch of his business as a whole, setting the gains of one against the losses of another, including even the entire loss of a vessel by capture, shipwreck, or other disaster, on which there was no insurance.

**Where Ship-owners** have insured themselves, charging off five or seven per cent. per annum for the loss or depre-

ciation of their vessels, that deduction must be made from the income, and will not be subject to tax.

**Premiums** paid for life insurance are not to be deducted from income. Family and personal expenses are not to be deducted, except as previously specified.

If a **Trust Fund** is held for general religious purposes and divided in proportions which are unsettled, or which are determined by circumstances, it will not be taxed in the hands of trustees, but in the income of the persons receiving the dividends; but if the fund is solely for the support of a particular person or persons, it is liable to taxation, whether in the hands of trustees or the beneficiary.

**The Amount** paid by an executor or administrator to a trustee is not liable to a second tax in the hands of the latter as income, but is considered as principal, the income from which, when derived, must be returned by him.

**The Assessment** paid on a pew in a church should be considered as in the nature of a contribution and not a tax, and neither this nor the rental of a pew can be deducted from the income.

**Taxes** paid by corporations cannot be allowed as deductions from the income of a stockholder.

**Marriage Fees**, gifts from members of a congregation to their pastor, etc., are taxable as income when the gifts or donations are in the nature of compensation for services rendered, whether in accordance with an understanding to that effect at the time of settlement or with an annual custom.

**Gifts of Money** from father to son, when not in the nature of payment for services rendered, or not in pursuance of an attempt to evade the revenue laws, are not liable to taxation as income.

**An Assessor** may require returns of income from persons sojourning in his district for a few months at a time, and transmit the same to the assessors of the several districts in which the parties reside.

**The removal of a rotten and worthless roof to replace it with a new one, is to be regarded as repairs, but the removal of an antiquated roof and the substitution of a more modern one, raising the walls to conform thereto, this would be "an improvement" of the property, and could not be deducted from the income.**

**A Foreign Consul residing in this country is liable to excise duties and also to income tax, except as to rents derived from real estate not within our jurisdiction.**

**The Shaker Institution at New Lebanon (and probably other Shaker establishments) is allowed to deduct one thousand dollars for each male covenanting member, these being about one-fifth of the whole community.**

**The Rate of Taxation (whether three or five per cent.) to which an income is subject, will be determined by the net amount after those deductions are made which have been specified, but the rate must be determined before the two thousand dollars allowed by law is deducted.**

**All Persons Neglecting or refusing to make return of income, except in case of sickness, are liable to an addition of fifty per cent. to the amount ascertained by the assistant assessor upon such information as he can obtain, and to a fine of one hundred dollars.**

**Income Returns are to be made out in the month of March, and the income tax is to be paid before the thirtieth day of April, following, under a penalty of five per cent. additional.**

**All Papers Necessary to be used for the collection from the government, of claims by soldiers or their legal representatives of the United States, for pensions, back pay, bounty, or for property lost in the service, require no stamps.\***

**\* As the assessors and collectors of internal revenue are always near at hand, waving their "blanks" and "forms" over us free Americans, like the American flag, and begging us just to give ourselves the trouble to fill them out—the compiler of this book considered it a waste of space to insert any herein. If internal revenue blanks are desired, let the reader cry with a loud voice: "Lo! I have an income, and I owe taxes," and not unlike the genii in eastern tales, the revenue officers will cordially respond with arms-full, and kindly assist to fill them out.**



## INTESTATE.

**Intestate.**—One who having lawful power to make a will has made none, or one which is defective in form. In that case, he is said to die “intestate,” and his estate descends to his heir at law.

## JETTISON.

**Jettison.**—The casting out of a vessel, from necessity, a part of the lading. It differs from flotsam in this, that in the latter the goods float, while in the former they sink and remain under water.

The Jettison must be made from sufficient cause and not from groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm or is laboring upon rocks or shallows, or is closely pursued by pirates or enemies.

If the Residue of the cargo be saved by such sacrifice, the property saved is bound to pay a proportion of the loss. In ascertaining such average loss, the goods lost and saved are both to be valued at the price they would have brought at the place of delivery on the ship's arrival there, freight, duties and other charges, being deducted. See INSURANCE.

## JOBBER.

**Jobber.**—One who buys and sells articles for others. Stock jobbers are those who buy and sell stocks for others. This term is also applied to those who speculate in stocks on their own account. See BROKER.

## JOINDER OF ACTIONS.

**Joinder of Actions.**—The union of two or more causes of action in the same declaration. In California, Nevada and Idaho, the statutory regulations on this subject are as follows:

**What Causes of Action may be Joined.**—The plaintiff may unite several causes of action in the same complaint, when they all arise out of :

1st. Contracts, express or implied.

2d. Claims to recover specific real property, with or without damages, for the withholding thereof or for waste committed thereon, and the rents and profits of the same.

3d. Claims to recover specific personal property, with or without damages, for the withholding thereof.

4th. Claims against a trustee, by virtue of a contract or by operation of law.

5th. Injuries to character.

6th. Injuries to person.

7th. Injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Provided, however, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

## JOINDER OF PARTIES.

**Joinder of Parties.**—When a married woman is a party, her husband shall be joined with her, except that :

1st. When the action concerns her separate property she may sue alone.

2d. When the action is between herself and her husband, she may sue or be sued alone.

**Persons severally Liable**, upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

**All Persons** having an interest in the subject of the action and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided by law.

**Of the Parties to the action,** those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

**Any Person** may be a defendant who has, or claims, an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

### JUDGE ADVOCATE.

**Judge Advocate.**—An officer of a court-martial who is to discharge some duties at the trial of offenders. His duties are to prosecute in the name of the United States; but he shall so far consider himself as counsel for the prisoner, after the prisoner shall have made his plea, as to object to leading questions to any of the witnesses, or any questions to the prisoner, the answer to which might tend to criminate himself. He is further to swear the members of the court before they proceed upon the trial.

### JUDGMENT.

**Judgment.**—The conclusion of law upon facts found or admitted by the parties, or upon their default in the course of the suit. In California, Nevada and Idaho, the statutory regulations on this subject are as follows:

**When a Trial by jury** has been had, judgment shall be entered by the clerk, in conformity with the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument, or further consideration, or grant a stay of proceedings.

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established at the trial, exceed the published, judgment for the defendant excess; or if it appear that the any other affirmative relief, judgmently.

the possession of personal property for the plaintiff may be for the possession, or the value thereof in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Immediately after filing a judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed, it shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

A Transcript of the original docket, certified by the clerk, may be filed by the recorder of any other county; and from the time of the filing, the judgment shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Satisfaction of a Judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within one year after the judgment, by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment

shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it. See CONFESSION OF JUDGMENT.

**Judgment Roll.**—Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll :

1st. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum indorsed upon the complaint that the default of the defendant in not answering was entered, and a copy of the judgment.

2d. In all other cases the summons, pleadings, verdict of the jury or finding of the court, commissioner or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment, and copies of any orders relating to a change of parties.

## JUDICIAL RECORDS.

The following are the provisions of the laws of California, Nevada, Idaho and Arizona, in regard to sealing and certifying records. It is the same in Oregon, although the phraseology of the law is, in some respects, different :

**United States and this State.**—A judicial record of this state or of the United States may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

**Other States.**—The records and judicial proceedings of the courts of any other state of the United States may be proved or admitted in the courts of this state by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief-justice or presiding magistrate, as the case may be, that the said attestation is in due form.

**Of Foreign Country.**—A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal; or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record, together with a certificate of a judge of the court that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case that the signature is genuine and the certificate in due form; and also, together with the certificate of the minister or ambassador of the United States, or of a consul of the United States in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk or other legal keeper of the record.

**A Copy of the Judicial Record of a foreign country** shall also be admissible in evidence upon proof:

1st. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it.

2d. That such original was in the custody of the clerk of the court or other legal keeper of the same.

3d. That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court; or, if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

**Statutes or other Written Law.**—Printed copies in volumes of statutes, code or other written law, enacted by any other state or territory or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such state, territory or government, shall be admitted by the courts and officers of this state on all occasions as presumptive evidence of such laws.

**Seal of Court.**—A seal of a court or public office, when required to any writ or process or proceeding, or to au-

thenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

**Certified Copy.**—A copy of any record, document or paper, in the custody of a public officer of this state or of the United States, within this state, certified under the official seal, or verified by the oath of such officer to be a true, full and correct, copy of the original in his custody, may be read in evidence in any action or proceeding in the courts of this state, in the like manner and with the like effect as the original could be if produced.

**Books in Custody of certain Officers.**—Whenever the public records, books or papers, in the custody of any collector of customs of the United States, or of the register or receiver of any land office of the United States, in this state or in the office of the surveyor-general of the United States for the state of California or in the office and in the custody of the clerk of the circuit or any district court of the United States for the state of California, shall be required as evidence in any court of this state, copies of such records, books or papers, duly certified by the proper officer, under his hand and official seal, where he has a seal, shall be received in evidence with the same force and effect as the originals.

#### FORMS.

##### *Certificate of Exemplification of Record—Probate Court.*

State of .....,  
and county of ....., } ss.

I, ....., county clerk of the county of ....., state of ....., and *ex officio* clerk of the probate court thereof, do hereby certify, that the foregoing .... pages, numbered from .... to .... inclusive, contain a true, full and correct, transcript of all the papers, orders and proceedings, on file, and of record in my office, in the matter of the estate of ....., deceased.

Witness my hand and the seal of said probate court, this .... day of ....., one thousand eight hundred and ....

[L.S.]

....., Clerk.

*Certificate of Judge to Signature, etc., of the Clerk.*

State of .....,  
and county of ..... } ss.

I, ....., judge of the probate court of the county of ....., do hereby certify that ..... whose genuine signature is affixed to the foregoing certificate is and was at the time of signing the same, the clerk of said court, duly authorized by law to make such certificate that he is the legal keeper of said record, and that the foregoing attestation is in due form.

Witness my hand, this .... day of ....., one thousand eight hundred and .....

.....,  
Probate judge.

*Certificate of Exemplification of Record.*

The people of the state of ..... to all to whom these presents shall come, greeting:

Know ye, that we, having inspected the records and files in the office of the clerk of the county of ....., and clerk of the district court of the .... judicial district of the state of ....., in and for the said county, do find a certain judgment roll there remaining of record, which is in the words and figures following, to wit: [here insert the record and conclude as follows:] all of which we have caused to be exemplified in accordance with the act of the congress of the United States.

Attest my hand and the seal of the .... district court, this .... day of ....., A.D. one thousand eight hundred and ....

[L. s.]

....., Clerk.

By ..... Deputy.

*Certificate to Copy of a Record or Paper, on File in the Clerk's Office.*

State of .....,  
county of ..... } ss.

I, ....., county clerk of the county of .... [where the paper is on file or on record, in one of the courts of which he is clerk, add, "and clerk of the .... court"] do hereby certify that I have compared the foregoing copy of a [name the instrument], and of the indorsements thereupon, with the original records of the same remaining in this office [or, "with the originals now remaining on file in this office"], and that the same are correct transcripts therefrom, and of the the whole of said original records [or, "originals"].

Witness my hand and seal of, etc. [as in foregoing forms].

[L. s.]

.....

*Certificate of a Judge to the Signature and Attestation of an Officer.*

State of .....  
county of ..... }

I, ....., judge of the .... judicial district of the state of ..... in and for the county of ....., do hereby certify that ..... by whom the annexed transcript [or, "record," or, "copy of," as the case may be], certificate and attestation, were made and given, and who, in his own proper



handwriting has thereunto subscribed his name [where he is an officer having a seal, add, "and affixed his official seal"], was, at the time of so doing, and now is, county recorder, in and for the said county of . . . , state of . . . , duly commissioned and qualified; to all whose acts as such, full faith and credit are and ought to be given, as well in courts of general jurisdiction as elsewhere, and that the said transcript [or, "record," or, "copy of," as the case may be], certificate and attestation, are in due form and made by the proper officer.

In witness whereof, I have hereunto set my hand, this . . . day of . . . , one thousand eight hundred and . . .

.....

District judge.

*Certificate of Clerk of Court to the Signature of the Judge.*

County of . . . , ss.

I, . . . , county clerk of the county of . . . , state of . . . and *ex officio* clerk of the district court of the . . . judicial district, in and for the county of . . . , do hereby certify that the Hon. . . , by whom the foregoing attestation was made, and whose genuine signature is subscribed thereto, was at the time of signing the same, and still is, judge of the district court of the . . . judicial district, in and for the county of . . . , duly commissioned and sworn, to whose acts as such full faith and credit are due.

In witness whereof, I have hereunto set my hand and seal of said . . . district court, this . . . day of . . . , A.D. 18..

[L.S.]

....., Clerk.

## JURISDICTION.

**Jurisdiction.**—The authority by which judicial officers take cognizance of and decide causes. It includes power to enforce the execution of what is decreed. See COURTS OF JUSTICE.

## JURORS.

### CALIFORNIA.

**Qualification of Jurors.**—A person shall be competent and qualified to act as a grand or trial juror, if he be:

1st. A citizen of the United States, a qualified elector of the county, and a resident of the township at least three months before being selected and returned.

2d. In possession of his natural faculties.

3d. Who has sufficient knowledge of the language in which the proceedings of the courts are had, provided that the re-

quirement of this third subdivision shall not apply to the counties of Monterey, San Luis Obispo, Santa Barbara, Los Angeles, San Bernardino and San Diego.

4th. Assessed on the last assessment roll of his township or county, on real or personal property, or both, belonging to him, if a resident at the time of the assessment.

**Persons Incompetent.**—A person shall be incompetent and disqualified from acting or serving as a grand or trial juror if he be :

1st. A person not possessing the qualifications aforesaid.

2d. A person convicted of a felony or misdemeanor, involving moral turpitude.

3d. A professional gambler, following gambling for a business.

**Persons Exempt.**—A person shall be exempt from liability to act as a grand or trial juror, and shall not be selected if he be :

1st. A judicial, civil or military, officer of the United States, or of the state of California.

2d. A person holding a county office.

3d. An attorney or counselor at law.

4th. A minister of the gospel, or a priest of any denomination.

5th. A teacher in a college, academy or school.

6th. A practicing physician.

7th. An officer, keeper or attendant, of any alms-house, hospital, asylum or other charitable institution, in this state.

8th. Any juror engaged in the performance of duty as officer or attendant of a county jail or the state prison.

9th. A captain, master, or other officer, or any person employed on board of a steamer, vessel or boat, navigating the waters of this state.

10th. An express mail carrier, telegraph operator, or keeper of a public ferry or toll-gate.

11th. A person otherwise exempt by law.\*

\* Any person may be excused from acting as a juror, when for any reason his interests or those of the public will be materially injured by his attendance, or when his own health or the death or sickness of a member of his family requires his absence.

## NEVADA.

**Who Exempt from Serving.**—The following-named persons shall be exempted from serving as grand or trial jurors, viz: all priests and ministers of the gospel, attorneys, law-reporters, practicing physicians, druggists and apothecaries, editors, all regularly-enrolled firemen, in actual service, and all state, county, township, town and municipal officers: *provided*, that no fireman, when summoned to act on any jury, shall be excused from serving as such juror until he shall have been sworn by the judge, as follows: "I . . . . ., do solemnly swear (or affirm), that I am a regularly-enrolled fireman, in active service in the fire department of [here state the city, town, or ward of the fire department of which such fireman claims to be an enrolled and active member], and that I am constant and active in the discharge of all the duties that devolve upon me, as a member of such fire department, so help me God [if an oath], under the pains and penalties of perjury [if an affirmation]."

## IDAHO

**Who Exempt from Serving.**—The following persons shall be exempted from serving as grand or petit jurors, viz: all priests or ministers of the gospel, attorneys and counselors at law, practicing as such, practicing physicians, all county, township or territorial officers, editors and regularly enrolled firemen in active service not exceeding sixty-five in number to each company.

## FORMS.

*Certificate of Drawing a Jury.*

State of . . . . . }  
 county of . . . . }

In pursuance of an order issued by the Hon. . . . . judge of . . . county, dated . . . . , A.D. . . . . , directed to, and ordering the sheriff of . . . county to summon a trial jury for the . . . term, A.D. . . . . , of the . . . court of said county, to be held on the etc., etc., said trial jury to be in attendance on said court on, etc.

We, the undersigned, county judge, county clerk and sheriff, proceeded to copy from the assessment roll of the said county, the names of . . . persons, to wit: . . . . . , etc., etc.

In witness whereof, we have hereunto set our hands, this .... day of ....,  
A.D. ....

....., Judge.  
....., County clerk.  
....., Sheriff.

State of .... }  
county of .... }

We, .... judge, ...., county clerk, and ...., sheriff of the county of  
....., state of ....., met at the chambers of the .... judge, in ...., on the  
.... day of ...., A.D. ...., at .... o'clock, in pursuance of the order of the  
county judge and notices given by said sheriff, proceeded and placed in a box  
prepared by the county clerk, the names of the before-named .... persons,  
each name being on a separate piece or slip of paper.

The said county clerk, in the presence of the .... judge, and the said  
sheriff drew from the box the names of .... four persons, to serve as trial  
jurors, until discharged, in the said court, to wit: .... etc., etc.

In testimony whereof, we have hereunto affixed our names, this .... day of  
....., A.D. ....,  
....., Judge.  
....., Clerk.  
....., Sheriff.

*Petition for Summoning a Grand Jury.*

To the Hon. .... judge of the .... court of the county of .....  
....., district attorney of the county of ...., respectfully represents, that  
since the commencement of the present term of this court, certain judgments  
found in this court at the last term thereof, and transferred to the  
district court of the judicial district, against divers persons, charging them  
with the crime of murder, have been set aside by said court for insufficiency,  
and the cases have been ordered to be resubmitted to a grand jury of this  
county.

That it is important that the cases should be speedily investigated, as parties  
are now in the county jail of said county, under a commitment for said  
offenses, and that there are other persons now confined in said jail upon  
charges of felony, whose cases require the immediate investigation of a  
grand jury.

Wherefore your petitioner prays that a grand jury may be forthwith ordered  
to be summoned before this court for the purpose of transacting such  
business as may lawfully come before it.

Dated ....

.....,

District attorney.

*Juror's Summons.*

Sheriff's office, .... 18..

To Mr. ....: You are hereby commanded to be and appear before  
the .... court of the .... and county of ....., on ....., the .... day of  
....., at .... o'clock, ...., at the court room of said court, at the ....  
in the .... county ....., then and there to serve as a trial juror [or,  
"grand juror"].

Herein fail not, under the penalty of the law.

....., Sheriff.

By ..... Deputy sheriff.

## JUSTICES' COURTS.

CALIFORNIA, NEVADA AND IDAHO.\*

**Jurisdiction.**—See COURTS OF JUSTICE.

**Parties may Appear in Person or by Attorney.**—Parties in justices' courts may prosecute or defend in person, or by attorney; and any person, on the request of a party, may act as his attorney, except that the constable by whom the summons or jury process was served, shall not appear or act on the trial in behalf of either party.

**Venue of Action.**—No person shall be held to answer to any summons issued against him from a justice's court, in a civil action, in any township or city other than the one in which he shall reside, except in the cases following:

1st. When there shall be no justice's court for the township or city in which the defendant may reside, or no justice competent to act on the case.

2d. When two or more persons shall be jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships or different cities of the same county, or in different counties, the plaintiff may prosecute his action in a justice's court of the township or city in which any of the debtors or other persons liable may reside.

3d. In cases of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the township or city where the injury was committed.

4th. When personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any township or city in which the property may be found, or in which the property was taken.

5th. When the defendant is a non-resident of the county, he may be sued in any township or city wherein he may be found.

\* In Nevada and Idaho, an appeal lies to the district court. Wherever "county court" occurs, read "district court," as far as Nevada and Idaho are concerned.

6th. Where a person has contracted to perform any obligation at a particular place, and resides in another township or city, he may be sued in the township or city in which such obligation is to be performed, or in which he resides. [And for the purpose of justice's court jurisdiction under this clause, the township or city in which the obligation is incurred shall be deemed to be the township or city in which it is to be performed, unless there is a special contract to the contrary—applicable to California alone.]

7th. When the foreclosure of a mortgage or the enforcement of a lien upon personal property is sought by the action, the plaintiff may sue in the township or city where the property is situated.

8th. Any person or persons residing in the city of San Francisco, may be held to answer to any summons issued against him or them from the court of a justice for any township within the corporate limits of the city of San Francisco, in any action or proceeding whereof justices of the peace of the city or county of San Francisco have or may have jurisdiction by law: *provided*, nothing herein shall be construed to allow any justice of said city or county to hold a court in any other township than the one for which he shall have been elected. [Applicable to California alone.\* In Idaho, justices of the peace have jurisdiction throughout the county for which they are elected.]

**Judgment by Confession.**—Judgment upon confession may be entered up in any justice's court in the state, specified in the confession. See **CONFESSION OF JUDGMENT**.

**Voluntary Appearance of Parties.**—Justices' courts shall have jurisdiction of an action and the persons of the parties thereto upon the voluntary appearance of the parties without summons, and without regard to their residences, or the place where the cause of action arose, or the subject matter of the action may exist. [Same in Nevada to here.] The plaintiff may commence an action by summons, either

\* In San Francisco, by a subsequent law, the several justices' courts are consolidated into one, with five judges, one of whom is chief justice.

in the township or city where the contract was by its terms to be performed, or in which the defendant resides, as he may elect.

**Commencement of Actions.**—Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, within one year after the filing of the same, or by the voluntary appearance and pleading of the parties without summons. In the latter case, the action shall be deemed commenced at the time of appearance.

**Service of Summons.**—Personal service of a summons must be had except in certain cases specified in the next paragraph. Service must be made by a sheriff, constable, or person specially deputed. In Idaho, the constable is not allowed to appoint a deputy. In San Francisco, the office of constable is abolished—all papers are served by the sheriff.

**Service by Publication.**—When the person upon whom the service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the justice, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by the publication of the summons. The order shall direct the publication to be made in a newspaper, to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least one week: *provided*, that publication against a defendant residing out of the state, or absent therefrom, shall not be less than three months. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication; the justice shall also direct a copy of the summons to be forthwith deposited in the post-office, directed to the person to be served, at his place of residence.

In Idaho, the proceedings are as follows: When the person upon whom the service is to be made resides out of the county in which the action is brought, or absents himself therefrom for more than six months, or conceals himself to avoid the service of summons, and that fact shall appear by affidavit to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, and that such defendant has property within the county, subject to attachment and execution, the summons may be served by delivering a copy thereof to the person in possession of such property, and leaving the same with such person, or in case such person cannot be ascertained, then by posting such copy at the place where such property is situated, in either of which cases the service of summons shall be deemed complete for the purpose of the action.

In Nevada, instead of publication, the summons may be posted by order of the justice.

**Order of Arrest.**—An order to arrest the defendant may be indorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable, at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases, arising after the passage of this act:

1st. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors; or where the action is for a willful injury to the person, or for taking, detaining or injuring, personal property.

2d. In an action for fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity.

3d. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought.



4th. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action. [No prohibition appears in the Nevada statutes against the arrest of a female.]

**Affidavit and Undertaking.**—Before an order for an arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

**Duty of Officer making Arrest.**—The officer making the arrest shall keep the defendant in custody until duly discharged by order of the justice.

**Defendant may Demand immediate Trial.**—The defendant under arrest, on his appearance with the officer, may demand a trial immediately, and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time; or he may have an adjournment, and be discharged on giving bail, as provided in the next paragraph. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest; but the action may proceed, notwithstanding, and the defendant shall be subject to arrest on the execution, in the same manner as if he had not been so discharged.

**Attachment as Security.**—In an action upon a contract, express or implied, made after the passage of this act, for the direct payment of money, which contract is made or is payable in this State, and is not secured by mortgage, lien or pledge, upon real or personal property, the plaintiff at the time of issuing the summons, or at any time afterwards,

may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided.

**Affidavit for Attachment.**—A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment in district court. See ATTACHMENT.

**Undertaking on Attachment.**—Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment.

**Writ of Attachment and Substance of.**—The writ may be directed to the sheriff or any constable of the county, and shall require him to attach and safely keep all the property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

**Replevy of Personal Property.**—The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him.

**Affidavit in Replevin.**—When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1st. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof.

2d. That the property is wrongfully detained by the defendant.

3d. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

4th. That the same has not been taken for a tax, assessment or fine, pursuant to statute, or seized under an execution, or an attachment against the property of the plaintiff, or if seized, that it is by statute exempt from such seizure.

5th. The actual value of the property.

**Order to take Property.**—The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or a constable of the county to take the same from the defendant, and deliver it to the plaintiff, upon receiving the undertaking mentioned below.

**Undertaking in Replevin.**—Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken; or if neither can be found within the county, by leaving them at the usual place of abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode within the county, by putting them in the nearest post-office, directed to the defendant.

**Defendant may Object to Sureties.**—The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties; if he fails to do so, he

shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property in the next paragraph.

**Return of Property to Defendant.**—At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as otherwise provided.

**Justification of Defendant's Sureties.**—The defendant's sureties, upon reasonable notice to the plaintiff, shall justify before the justice; and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time appointed, he shall deliver the property to the plaintiff.

**Concealed Property, Duty of Officers.**—If the property or any part thereof be concealed in a building or inclosure, the officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession.

**Pleadings in Justices' Courts.**—The pleadings in justices' courts shall be:

1st. The complaint by the plaintiff, stating the cause of action.

2d. The answer by the defendant, stating the ground of the defense.

**Same.**—The pleading shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is:

1st. For the foreclosure of any mortgage, or the enforcement of any lien on personal property.

2d. For a forcible or unlawful entry upon, or a forcible or unlawful detention of, lands, tenements or other possessions.\*

3d. To recover possession of a "mining claim." In other cases the pleading may be oral or in writing. [California alone.]

**Form of Pleadings.**—When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office, and a reference to them made in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

**Complaint, Contents of.**—The complaint shall state in a plain, direct manner the facts constituting the cause of action.

**Answer, Contents of.**—The answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or a counter claim, upon which an action may be brought by the defendant against the plaintiff in a justice's court.

**Insufficient Knowledge.**—A statement in an answer that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

\* This provision, although found in the law governing justices' courts, has no application, as the county courts in *California* have jurisdiction in such cases

**Written Instrument, Pleading.**—When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished: or if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

**Written Instruments, Note, Bill, etc.**—If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers or assignors, thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

**Demurrer to Pleadings.**—Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

**Variance between Pleadings and Proof.**—A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

**Title or Possession of Real Property not to be Litigated.**—The parties shall not be at liberty to give evidence upon any question which involves the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, nor shall any issue presenting such ques-

tion be tried by said justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property, or the legality of any tax, impost, assessment, toll or municipal fine, the justice shall suspend all further proceedings in the action and certify the pleadings, or if the pleadings be oral, a transcript of the same, from his docket to the district court of the county, and from the time of filing such pleadings or transcript with the county clerk, the district court shall have over the action the same jurisdiction as if it were commenced therein. [In Idaho, justices' courts may try the right to the possession of real property and the legality of any tax, impost, assessment, toll or municipal fine, and when the pleadings are certified to the district court, upon the answer of defendant he shall file a bond with two or more sureties to pay all costs. Justices cannot try the *title* of real estate. In Nevada, they cannot try the right to the possession of mining claims or the title to them. In other respects the law is the same as in California.]

**Judgment in Certain Cases.**—If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may, nevertheless, proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

**Trial by Jury.**—A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the

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**Written Instruments, Note, Bill, etc.**—If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers or assignors, thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

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tion be tried by said justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property, or the legality of any tax, impost, assessment, toll or municipal fine, the justice shall suspend all further proceedings in the action and certify the pleadings, or if the pleadings be oral, a transcript of the same, from his docket to the district court of the county, and from the time of filing such pleadings or transcript with the county clerk, the district court shall have over the action the same jurisdiction as if it were commenced therein. [In Idaho, justices' courts may try the right to the possession of real property and the legality of any tax, impost, assessment, toll or municipal fine, and when the pleadings are certified to the district court, upon the answer of defendant he shall file a bond with two or more sureties to pay all costs. Justices cannot try the *title* of real estate. In Nevada, they cannot try the right to the possession of mining claims or the title to them. In other respects the law is the same as in California.]

**Judgment in Certain Cases.**—If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may, nevertheless, proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

**Trial by Jury.**—A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the

justice, from the citizens of the city or township, and not from the bystanders.

**Dismissal of Case without Prejudice.**—Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

1st. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2d. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

3d. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county, or township, or city; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

**Judgment by Default.**—When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows:

1st. When a copy of the account, note, bill, or other obligation upon which the action is brought, was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons.

2d. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons. [The second clause is applicable to California and Nevada alone.]

**Entry of Judgment and Coin Contracts.**—Upon a verdict the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within four days after the close of the trial. If the action be on a contract against two or more defendants, and the summons is served on one or more, but not on all,

the judgment shall be entered up only against those who were served, or have voluntarily appeared, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the individual property of the defendants served [the same in Idaho to here; the balance is only applicable to California], or who have voluntarily appeared in the action. In an action on a contract or obligation in writing for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein.

**Part of Sum found due Remitted.**—When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

**Offer to Compromise.**—If the defendant at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

**Judgment on Arrest.**—When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment and entered in the docket.

**Costs.**—When the prevailing party is entitled to costs the justice shall add their amount to the verdict; or in case of a failure of the plaintiff to recover, or in case of a dis-

missal of the action, shall enter up judgment in favor of the defendant for the amount of such costs

**New Trial.**—A new trial may be granted by the justice, on motion, within ten days after the entry of the judgment, for any one of the following causes:

1st. Accident or surprise, which ordinary prudence could not have guarded against.

2d. Excessive damages, appearing to have been given under the influence of passion.

3d. Insufficiency of the evidence to justify the verdict or other decision.

4th. Newly-discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

**Application for a New Trial.**—The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

**Appeal to County Court.**—Any party dissatisfied with a judgment rendered in a justice's court may appeal therefrom to the county court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy on the adverse party. [The same in Nevada to here.] The notice shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, and whether the appeal is taken on questions of law or fact, or both.

**Statement on Appeal and Settlement of.**—When a party appeals to the county court on questions of law alone, he shall, within ten days from the rendition of the judgment, prepare a statement of the case, and file the same with the justice. The statement shall contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds,

and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments; the proposed statement and amendments shall be settled by the justice; and if no amendments be filed, the original statement shall be adopted. The statement thus adopted, or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial and the notice of appeal, shall be used on the hearing of the appeal before the county court. [California and Idaho.]

**Statement need not be Made, When.**—When a party appeals to the county court on questions of fact, or on questions of both law and fact, no statement need be made, but the action shall be tried anew in the county court. [California and Idaho.]

**Notice of Appeal and Statement.**—Upon receiving the notice of appeal, and on payment of the fees of the justice, and filing an undertaking as required in the next paragraph, the justice shall, within five days, transmit to the clerk of the county court; if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions and other papers, filed in the cause, the notice of appeal and the undertaking filed; and the justice may be compelled by the county court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justices by the party or his attorney. In the county court, either party shall have the benefit of all legal objections made in the justice's court.

**Undertaking on Appeal and Justification of Sureties.**—An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal, or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the

judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the said action in the county court. When the action is for the recovery of specific personal property, the undertaking shall be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the county court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavits of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; or the bond shall be executed by a sufficient number of sureties who can justify, in the aggregate, to an amount equal to double the amount specified in the bond, or a deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the justice. And such deposit shall be equivalent to the filing of the undertaking in this act mentioned; and in such cases the justice shall transmit the money to the clerk of the county court, to be by him paid out on the order of the court. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they, or other sureties, justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no undertaking had been given. [In Nevada, the bonds for costs must be made payable in gold coin, and all the undertakings must

must be made payable in the currency in which the judgment appealed from is payable.]

**Stay of Proceedings.**—If an execution be issued, on the filing of the undertaking staying all proceedings, the justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof, as may be necessary to pay the same.

### FORMS.

#### *Summons.*

State of ..... in the justice's court of the ..... township, in and for the  
..... county of.....

The people of the state of .... to .... greeting:

You are hereby summoned to appear before me, at my office in the .... township, in the .... county of ....., on the .... day of .... A.D. 18.. at .... o'clock ....., to answer unto the complaint of ....., upon a promissory note, etc. [describe it, stating the amount, etc.], when judgment will be taken against you for the said amount, together with costs and damages, if you fail to appear and answer.

To the sheriff or any constable of said county, greeting:

Make legal service and due return hereof.

Given under my hand, this .... day of .... A.D. 18..

.....  
Justice of the peace of said township.

#### *Order of Arrest.*

State of ....., }  
county of ..... }

The people of the state of ..... to the sheriff or any constable of said county:

You are hereby commanded to arrest the within-named defendant and bring him before me forthwith (at my office in said township), to answer the plaintiff's complaint, filed.

Given under my hand, this .... day of .... A.D. 18..

.....  
Justice of the peace.

I hereby certify that I have served the above order, by arresting and bringing into court the said ....., this .... day of .... A.D. 18..

.....  
Constable.

*Indorsement Deputizing Special Constable.*

At the request of the plaintiff, and on being satisfied that it is expedient, I hereby especially depute . . . . ., a discreet person, and of suitable age, and not interested in the action, to serve and return the within writ, and the within attachment.

. . . . ., 18..

.....,

Justice of the peace

*Complaint on Written Instrument*

In the justice's court of the . . . township.

State of . . . . .,  
county of . . . . . } ss.

. . . . .  
against }  
. . . . .

The above-named . . . . ., as plaintiff, commences this action in the justice's court of the . . . township, state of . . . . ., against the said . . . . ., a resident of said . . . . . county, as defendant, and for cause of action complains and alleges as follows, to wit:

That heretofore, to wit, on the . . . day of . . . . ., in the year of our Lord one thousand eight hundred and . . . . ., at the said . . . . . county, the said defendant made his certain instrument in writing, bearing date on that day, in the words and figures following, to wit: [here insert copy of the note], and then and there delivered the same to said plaintiff, who thereby became and still is the legal owner and holder thereof, and entitled to demand and receive the sum of money therein expressed.

And the said plaintiff avers that the said sum of money in said instrument mentioned, is now past due, and payable from the said defendant to said plaintiff, and that the said defendant, although the same has been duly presented and payment thereof demanded, unjustly neglects and refuses to pay the same or any part thereof, and that said sum, in said instrument mentioned, is still wholly due and unpaid, together with the interest due thereon.

Wherefore, the said plaintiff claims and prays for a judgment of this honorable court against the said defendant for the said sum of [amount of the note] dollars with interest thereon, from the . . . day of . . . . ., A.D. 18.., at the rate of . . . . . per cent. per . . . . ., besides costs of suit.

Dated . . . . ., this . . . day of . . . . ., A.D. 18..

.....,

Plaintiff's attorney.

*Affidavit for Order of Arrest.*

In the justice's court of the . . . . . township.

State of . . . . .,  
county of . . . . . } ss.

. . . . .  
against }  
. . . . .

. . . . ., the plaintiff in this suit, being duly sworn, deposes and says, that the cause of action in this case arose after the passage of the act of the legis-



lature of the state of ....., entitled "An act to regulate proceedings in civil cases in the courts of justice of this state," passed ...., 18..; that it is an action for the recovery of money or damages, in a cause of action arising upon an express contract, and that the defendant is about to depart from this state with the intent to defraud his creditors. {Or set out other cause of arrest, as may be.}

And the deponent further states and shows to the court the following facts and circumstances [or of other ground of arrest] in support of the above allegations of fraud, that is to say: [here state the facts and circumstances particularly].

Sworn to before me, this .... day of ....., A.D. 18..

Justice of the peace.

*Undertaking on Order of Arrest.*

Justice's court, ..... township.

State of ..... }  
county of ..... } ss  
..... }  
against }  
..... }

Whereas, an order to arrest the above-named defendant has been this day issued: Now, therefore, we, the undersigned, do undertake on the part of the above-named plaintiff, that if the defendant recover judgment the said plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said arrest—not exceeding .... hundred dollars.

Witness our hands and seals in the .... county of ....., on the .... day of .... A.D. 18..

[L.S.]

[L.S.]

[L.S.]

Approved, .....

Justice of the Peace.

[Affidavit of justification in usual form].

*Undertaking by Defendant on Arrest.*

Justice's court, ..... township.

State of ..... }  
county of ..... } ss  
..... }  
against }  
..... }

Whereas, the above-named defendant has been arrested at the suit of the above-named plaintiff. Now, therefore, we, the undersigned, do undertake on the part of the above defendant, that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued to enforce the judgment therein; or that we will pay to the plaintiff the amount of any judgment which he may recover in this action, not exceeding .... hundred dollars.

Witness our hands and seals in the .... county of ....., on the... day of ....., A.D. 18..

..... [L.S.]

..... [L.S.]

Approved,

..... [L.S.]

....., Justice of the peace.

*Venire.*

Justice's court, .... township, before .... esq., justice of the peace.  
state of ....., county of .....

..... }  
against

The people of the state of ....., to the sheriff or any constable of said county, greeting:

You are hereby commanded to summon twelve good and lawful men, citizens of the .... of ....., and not from bystanders, to act as jurors to try the issue in the above-entitled cause; said jurors to meet at my office in said township for said purpose, on the .... day of ....., A.D. 18.., at .... o'clock precisely.

Make lawful return hereof.

Given under my hand this .... day of ....., A.D. 18..

.....,

Justice of the peace of said township.

*Writ of Attachment.*

Justice's court, .... township, county of .....

..... }  
against

The people of the state of ....., to the sheriff or any constable of the .... county of ....., greeting:

You are hereby commanded to attach and safely keep all the property of the above-named defendant within in this county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, to wit: .... dollars, beside the costs; unless the said defendant shall give you security by an undertaking in two sufficient sureties, for said amount and costs, in which case you will take such undertaking.

Make due return hereof.

Given under my hand, and dated at the .... township, on the .... day of ....., A.D. 18..

.....,

Justice of the peace of said township.

*Notice of Attachment.*

County of ....., ...., 18..

..... }  
against

To ....: By virtue of an attachment issued out of the justice's court,

and to me directed against above defendant, I attach all money, debts, effects and credits, in your hands, or under your control, belonging to the above-named defendant, or so much thereof as will satisfy the claim, to wit: .... dollars, with cost and accruing cost.

Witness my hand, this .... day of ....., A.D. 18..

.....  
Constable.

*Execution.*

Justice's court, ..... township.

United States of America, }  
state of ....., } ss.  
county of .....

The people of the state of ....., to the sheriff or any constable of the county of ....., greeting:

JUDGMENT.	Damages - - -	\$.. ..	Whereas, a judgment was rendered before me, a justice of the peace for the ..... township in said ..... county of ....., on the ..... day of ..... A.D. 18., against ....., and in favor of ....., for the sum of .... dollars, damages; and .... dollars, costs of suit.
	Costs - - -	.. ..	
		\$.. ..	
ACCRUING COSTS.	Execution and filing	\$.. ..	These are therefore to command you, that out of the personal property, and if sufficient personal property cannot be found,
	Levy - - -	.. ..	
	Percentage - - -	.. ..	
	Advertisement - - -	.. ..	
	Keeping - - -	.. ..	
	Other costs - - -	.. ..	
		\$.. ..	

then out of the real property of the said ....., you levy and cause to be made, by distress and sale of the said amount of .... dollars damages, and .... dollars costs of suit, together with the cost that may accrue—and of this writ make legal service and due return within .... days from the date hereof.

Given under my hand this .... day of ....., A.D. 18..

.....  
Justice of the peace of said township.

*Undertaking on Release of Attachment.*

Know all men by these presents, that we, ...., as principal, and ...., and ....., as sureties, all of the ..... county of ....., are held firmly bound unto ....., of the city and county aforesaid, in the sum of .... hundred dollars, lawful money of the United States of America, to be paid to the said ....., his heirs, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators or assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this .... day of ....., 18.

Now the condition of this obligation is such, that, whereas a writ of attachment has issued against the above bounden ....., at the suit of ..... and certain of his goods and chattels have been attached under and by

virtue thereof. Now, in consideration of the release of said goods and chattels from such attachment, if the said . . . . ., shall well and truly pay any judgment and costs that the said . . . . . may recover against him, the said . . . . ., then this obligation to be null and void; otherwise to remain in full force and effect.

..... [L.S.]

..... [L.S.]

..... [L.S.]

[Affidavit of justification in usual form.]

*Order on Garnishes to Appear and Answer.*

United States of America, justice's court, . . . township.

State of . . . . . }  
county of . . . . . } ss.

..... }  
against }  
..... }

The people of the state of . . . . ., to . . . . ., greeting :

Whereas, it has been alleged and made to appear to the undersigned, one of the justices of the peace of said township, that an execution has been duly issued out of this court against the property of the above-named defendants and is still in force; and that you have in your possession or under your control certain debts, moneys, effects, credits and other property, owing to or belonging to the said defendant.

You are therefore commanded, to be and appear before me, at my office in said township, in said county, on the . . . day of . . ., A.D. 18.., at . . . o'clock M., then and there to be examined on oath concerning the same; and you are further commanded not to pay, transfer, return or otherwise part with or dispose of, any such debts, moneys, effects, credits, or other property, until duly released according to law.

Given under my hand, this . . . day of . . ., A.D. 18..

.....

Justice of the peace of said township.

*Constable's Jury Summons.*

Justice's court, . . . township.

To Mr. . . . .: You are hereby notified and required to attend before the justice's court of the . . . township, on the . . . day of . . . at . . . o'clock M., in the court-room in the . . . county of . . ., then and there to serve as a juror.

Herein fail not, under the penalty of the law.

.....

Constable.

*Attachment for Defaulters.*

Justice's court, . . . township.

State of . . . . . }  
county of . . . . . }

The people of the state of . . . . ., to the sheriff or constable of said county, greeting :

You are hereby commanded forthwith to attach the body of . . . . ., a

defaulting juror, and have him before our said court, on . . . , the . . . day of . . . , 18. . , then and there to show cause why he should not be punished for contempt in disobeying the mandate of said court.

Justice of the peace of said township.

*Notice of Transfer of Cause.*

Justice's court, . . . township.

State of . . . . . }  
           county of . . . . . }  
           . . . . . }  
           *against* }  
           . . . . . }

To the plaintiff and defendant:

Please take notice that the above-entitled case, transferred to this court from the . . . township, justice's court, is set for trial before me at my court-room in said . . . township, . . . . . , A.D. 18. . , at . . . o'clock, . . . Yours, etc.

Justice of the peace.

. . . . . , A.D. 18. .

*Satisfaction of Judgment.*

Justice's Court of the . . . township, state of . . . . . , county of . . . . .

. . . . . }  
           *against* }  
           . . . . . }

Satisfaction is acknowledged between . . . . . the plaintiff and . . . . . the defendant, for the sum of . . . dollars, being the amount of a judgment entered in the judgment book of the justice's court, county of . . . . . , the . . . day of . . . , one thousand eight hundred and . . . . .

[L.S.]

State of . . . . . }  
           county of . . . . . } ss.

On this . . . day of . . . . . , A.D. one thousand eight hundred and . . . , before me, . . . . . , a justice of the peace, in and for the said county, personally appeared . . . . . , to me personally known to be the individual described in and who executed the annexed instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Justice of the peace.

*Notice of Appeal.*

Justice's court of the . . . district, . . . township, county of . . . . .

. . . . . }  
           *against* }  
           . . . . . }

You will please take notice, that the defendant in this action, above-named,

herby appeals to the ..... court of the county of ....., from the judgment therein made and entered in the justice's court on the ... day of ....., A.D. 18.., in favor of said plaintiff, against defendant, and from the whole thereof, this appeal is taken on questions of both law and fact [or, "this appeal is taken on questions of law alone"].

Dated, ....., this .... day of ....., A.D. 18..

Yours, etc.,

.....

Attorney for appellant.

To the justice of said justice's court, and ....., attorney for respondent.

#### *Undertaking an Appeal.*

State of ..... In the justice's court of the .... township, in and for the ..... county of .....

Know all men by these presents, that we, ...., as principal, and .... and ..... as sureties, are held and firmly bound unto ....., his executors, administrators and assigns, in the full sum of .... hundred dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed with our hands, and sealed with our seals, this .... day of .... A.D. 18..

The condition of the above undertaking is this, that whereas the said .... obtained a judgment against the said ....., before ....., esq., justice of the peace of the .... township, .... county aforesaid, on the .... day of ....., A.D. 18.., for .... dollars costs, and whereas the above bounden .... is desirous of appealing from the decision of said justice, to the .... court of the county of .....

Now, if the above bounden .... shall well and truly pay, or cause to be paid, the amount of said judgment and all costs, and obey any order the said county court may make therein, if the said appeal be withdrawn or dismissed; or pay the amount of any judgment and all costs that may be recovered against the said appellant, in said county court, and obey any order the said court may make therein, then this obligation to be null and void, otherwise in full force and virtue.

..... [L.S.]

..... [L.S.]

..... [L.S.]

[Affidavit of justification to be added.]

#### *Complaint for Taking Personal Property.*

In the justice's court, state of ....., county of ....., of the .... township.

.....  
     *against* }  
     ..... }

County of ....., ss.

....., plaintiff in this action, by ...., his attorney, complains of ..... resident of said city and county, defendant, and for cause of action shows:

That heretofore, to wit: on the .... day of ...., in the year of our Lord one thousand eight hundred and ....., at the said ...., the said defendant, with force and arms, seized and took certain goods and chattels of the plaintiff, to wit: [here describe the property], of great value, to wit: of the value of .... hundred dollars, and carried away the same and converted and disposed thereof to his own use, and other wrongs to the plaintiff, then and there did, against the peace of the people of the state of ....., and to the damage of the said plaintiff, of .... hundred dollars. And the said plaintiff further alleges, that the said defendant refuses to return said property, although demand has been made therefor.

Wherefore, he brings this suit, and prays judgment against the said defendant, for his damages aforesaid, to .... hundred dollars and his costs, and that execution to enforce the same may issue as well against the body of the said defendant as against his estate.

.....,

Plaintiff's attorney.

County of ....., ss.

....., the plaintiff, being sworn, deposes and says, that he has read the foregoing complaint; and knows the contents thereof, that the same is true, of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true.

.....

Sworn to before me, this .... day of ...., A.D. 18..

.....,

Justice, etc.

*Complaint on Claim and Delivery of Personal Property.*

In the justice's court of the ..... township.

State of ....., }  
county of ..... } ss.

..... }  
against }  
..... }

The above-named plaintiff complains of the above-named defendant, a resident of said county, and for cause of action respectfully shows to this honorable court that heretofore, to wit: on the .... day of June, A.D. 18.., at the county of ....., the defendant has become possessed of and wrongfully detains from the plaintiff the following goods and chattels, the property of the plaintiff, that is to say: [here describe the property], the same being of the value of .... hundred dollars; and the plaintiff further alleges that the said defendant refuses to return said property although demand has been made therefor.

Wherefore the plaintiff demands that the defendant may be adjudged to deliver forthwith to the plaintiff the said goods and chattels, and to pay to the plaintiff damages for the detention thereof in the sum of .... hundred dollars, or to pay to the plaintiff the sum of .... hundred dollars, the value thereof, in case the delivery is not made, together with the costs of this

action, or that such further or other relief in the premises may be given to the said plaintiff as may be just and equitable. ....

Plaintiff's attorney.

[Affidavit as preceding.]

*Affidavit on Claim and Delivery of Personal Property.*

State of .....,  
 county of ....., ..... township. } ss.  
 ..... }  
 against }  
 ..... }

...., plaintiff in this action above-named, being duly sworn, deposes and says, that the said plaintiff is the owner of and is lawfully entitled to the possession of the following described property, to wit: [here describe the property], that the said property is in possession of and wrongfully detained by the above-named defendant, and that the alleged cause of said detention, according to this deponent's best knowledge, information and belief, is as follows, to wit: [here state the cause], that the said property or any part thereof, has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution, or an attachment against the property of the said plaintiff, and that the actual value of said property is .... hundred dollars.

Subscribed and sworn to before me, this .... day of ...., A. D. 18..

Justice of the peace.

*Order to Take the Property.*

State of .....,  
 county of ....., .... township. }

The people of the state of ....., to the sheriff or any constable of said county, greeting:

You are hereby commanded to take the within-described property from the defendant, ...., and deliver the same to the plaintiff, ...., on his complying with the requirements of section .... of the act entitled "An act to regulate proceedings in courts of justice of this state."

Witness my hand, this .... day of ...., A.D. 18..

Justice of the peace.

*Undertaking on Claim and Delivery of Personal Property.*

State of .....,  
 county of ....., .... township. }  
 ..... }  
 against }  
 ..... }

Whereas, the above-named plaintiff has this day filed his complaint in this court against the said defendant, claiming the delivery of [here describe the property]. Now, therefore, we, ...., principal, and .... and ....



...., sureties, do hereby agree and undertake, in consideration of said delivery, in the sum of .... hundred dollars, for the prosecution of the action for the return of the said property, if return thereof be adjudged by the court, and for the payment to the defendant of such sum as shall, for any cause, be recovered against said plaintiff, not exceeding .... hundred dollars.

In witness whereof, we have hereunto set our hands and seals, this .... day of ...., A.D. 18...

..... [L.S.]

..... [L.S.]

..... [L.S.]

Approved, ...., Constable.

*Affidavit of Justification.*

State of ..... }  
county of ..... }

..... and ..... sureties in the within undertaking, being duly sworn, say, each for himself, and not one for the other, that he is worth the sum of .... hundred dollars, over and above all legal debts and liabilities, of property not exempt from execution, and is a resident and freeholder or householder of said county.

.....

.....

Subscribed and sworn before me, this .... day of ....., A.D. 18..

.....

Justice of the peace.

*Undertaking on Attachment.*

Justice's court, .... Township.

State of ..... }  
county of ..... }

..... }  
against }  
..... }

Whereas, an attachment against the property of the above-named defendant has been demanded and is about to issue. Now, therefore, we, the undersigned, do undertake on the part of the above-named plaintiff, that if the defendant recover judgment, or if the attachment should be dismissed, the said plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of .... hundred dollars.

Witness our hands and seals, in the city and county of ....., on the .... day of ...., A.D. 18...

..... [L.S.]

..... [L.S.]

..... [L.S.]

Approved, ....,

Justice of the peace.

[Affidavit of justification as in other forms.]

*Affidavit for Attachment.*

In the justice's court of the .... township, in and for the county of .....

..... }  
*against* }  
 ..... }

County of ....., ss.

....., the plaintiff in the action above-named, being duly sworn, deposes and says, that the defendant above named is indebted to him, the said plaintiff, in a certain sum, that is to say, in the sum of .... hundred dollars, over and above all legal set-offs and counter-claims, upon an express contract for the direct payment of money, and that such contract was made and is payable in this state, and that the payment of the same has not been secured by any mortgage on real or personal property.

And this deponent further says, that he, this deponent, has good reason to believe, and does believe, that the following cause for issuing an attachment in this action actually exists at the time of making this affidavit, to wit: that the said defendant, the debtor above-named, is a non-resident of this state [or, state other ground of attachment as per statute], that the facts upon which such belief is founded, are as follows: [here state the facts].

Sworn and subscribed before me, this .... day of ....., A.D. 18...

Justice of the peace.

*Bond of Indemnity.*

Know all men by these presents, that we, ...., as principal, .... and ....., as sureties, are held and firmly bound unto .....f constable of the .... township of the county of ..... and state of ....., in the sum of .... hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators-jointly, severally and firmly, by these presents.

Witness our hands and seals, at said county, this .... day of ....., 18...

The condition of the above obligation is such, that, whereas, in a certain suit at law lately pending before ....., esq., justice of the peace of the .... township of said county wherein .... was plaintiff and .... was defendant, a writ of attachment, bearing date the .... day of ....., 18..., has issued, directed to said constable to execute; and, whereas, the following property [here describe the property] has been seized and taken, by virtue and under the authority of said writ; now, if the said .... shall save and keep said ...., constable as aforesaid, harmless in the matter, and well and truly pay all damages, costs and expenses, which said constable may incur by reason of the return of said property, or of the claim, estate or title, of the said ....., or any other person or persons to or in the same, then the above obligation to be void, otherwise to remain in full force and effect.

..... [L.S.]

..... [L.S.]

..... [L.S.]

Executed in presence of

.....

[With the usual affidavit of justification.]

*Complaint—Forcible Entry.*

[For Nevada and Idaho.]

In the justice's court of the ..... township, of the state of ....., in and  
for the county of .....

..... }  
against  
..... }

County of ...., ss.

....., the plaintiff in this suit, by ..... his attorney, complains  
of ..... the defendant, a resident of said ..... county, and, for cause  
of complaint, shows that at the time of the commencing of the wrongs here-  
inafter complained of, he was, and for a long time before had been, in the  
peaceable and quiet possession of, and is still entitled to the possession  
of, that certain piece or parcel of land, lying and being situate in the .....  
of ....., and bounded and described as follows, to wit: [here describe the  
property].

And the said plaintiff further alleges, that being so in the peaceable and  
quiet possession of said described premises, and entitled to the possession of  
the same, the said defendant, on, etc., ..... with great force and violence,  
and with a multitude of people, unlawfully entered on said described prem-  
ises, and with force and violence removed, put out and expelled, the said  
plaintiff therefrom, and took possession of the same, and the said .....  
has ever since illegally, forcibly and unlawfully, detained possession of the  
same from plaintiff, to his great damage, to wit: the sum of .... hundred  
dollars, and said plaintiff alleges that the monthly value of the rents and  
profits of said premises is .... dollars. Plaintiff therefore prays for judg-  
ment against the said defendant for the restitution of the above-described  
premises, and for the damages suffered by said plaintiff by the said forcible  
and unlawful entry upon and forcible and illegal detention of the above-  
described premises, for the monthly rents and profits during the said unlaw-  
ful detention, and that said damages may be trebled, and for such other and  
further relief as by law and right they may be entitled to, and for their costs  
in this behalf expended.

.....  
Plaintiff's attorney.

County of ....., ss.

....., the plaintiff, being sworn, deposes and says, that he has read the  
foregoing complaint, and knows the contents thereof, and that the same is true  
of his own knowledge, except as to the matters which are therein stated on his  
information and belief, and as to those matters that he believes it to be true.

.....  
Sworn to before me, this .... day of ....., A.D. 18..

.....  
Justice of the peace.

*Summons—Forcible Entry.*

[For Nevada and Idaho.]

In the justice's court of the .... township, county of .....

.....  
 against }  
 .....

The people of the state of ..... to the sheriff or any constable of said county, greeting:

Whereas, ....., of the county of ....., hath exhibited unto me, a justice of the peace of said ..... county, a complaint against ....., of the said county, wherein he alleges that he has been in the peaceable and quiet possession of, and is entitled to the possession of, that certain piece or parcel of land, lying and being situate in the .... of ....., and bounded and described as follows, to wit: [here describe the property], and the said plaintiff further alleges that being so in the peaceable and quiet possession of said described premises, and entitled to the possession of the same, the said defendant on, etc., .... with great force and violence, and with a multitude of people, unlawfully entered on said described premises, and with force and violence removed, put out and expelled, the said plaintiff therefrom, and took possession of the same, and the said .... has ever since illegally, forcibly and unlawfully, detained possession of the same from plaintiff, to his great damage, to wit: the sum of .... hundred dollars. And the plaintiff alleges that the monthly value of the rents and profits of said premises is .... dollars. Plaintiff therefore prays for judgment against the said defendant for the restitution of the above-described premises, and for the damages suffered by said plaintiff by the said forcible and unlawful entry upon and forcible and illegal detention of the above-described premises, for the monthly rents and profits during the said unlawful detention, and that the damages may be trebled, and for such other and further relief as by law and right he may be entitled to, and for his costs in this behalf expended.

You are therefore commanded to summon the said ....., if he be found in your county, to be and appear before me at my court-room in said township, in said county of ....., on the .... day of ....., 18.., at the hour of .. A.M., then and there to make answer unto the complaint aforesaid.

Given under my hand this .... day of ....., 18...

.....,  
 Justice of the peace.

I hereby certify the above to be a true and correct copy of the original summons by me issued in the above-entitled cause.

.....,  
 Justice of the peace, .... township.

*Writ of Restitution.*

[For Nevada and Idaho.]

State of ....., county of ....., .... township.

The people of the state of ..... to the sheriff and constable of the county aforesaid:

Whereas, ....., of the county of ....., at a court of inquiry of a

forcible entry and unlawful detainer, held at my office in the county aforesaid, on the .... day of ...., A.D. 18.., before me, a justice of the peace for the county aforesaid, by the consideration of the court, hath recovered judgment against ...., to have restitution of all that [here insert description].

You are therefore commanded that, taking with you the force of the county, if necessary, you cause the said .... to be immediately removed from the aforesaid premises, and the said .... to have peaceable restitution of the same.

And you are also commanded that of the goods and chattels of the said .... within said county, you cause to be made the sum of .... hundred dollars for the said plaintiff, together with the costs of suit indorsed thereon, and make return hereof within .... days from this date.

Given under my hand, this .... day of ...., A.D. 18..

.....,  
Justice of the peace.

## KIDNAPPING.

**Kidnapping.**—The forcible abduction or stealing away of a man, woman or child. See **CRIMES AND PUNISHMENTS**.

## KNOWLEDGE.

**Knowledge.**—Information as to a fact. Many acts are perfectly innocent when the party performing them is not aware of certain circumstances attending them: For example, a man may pass a counterfeit note, and be guiltless if he did not know it was so; he may receive stolen goods if he were not aware of the fact that they were stolen. In these and the like cases it is the guilty knowledge which makes the crime.

Such **Guilt Knowledge** is part of the offense, and must be averred and proved as such. But it is a general rule that which by the common law or by statute is unlawful, and in pursuing his criminal purpose does that which constitutes another and different offense, he shall be held responsible for all the legal consequences of such criminal act. When a man without justifiable cause intends to wound or maim another, and in doing it kills him, it is murder, though he had no intention to take life. See **CRIMES AND PUNISHMENTS**.

## LABOR.

**Workmen Preferred Creditors.**—In all assignments of property of any kind, made by any person or company to trustees or assigns, on account of inability on the assignor's part to pay his debts, the wages of the miners, mechanics, salesmen, servants, clerks or laborers, employed by such person or company, are preferred claims, and must be paid by such assignee in preference to all other demands: *provided*, such wages shall not exceed in value one hundred dollars in gold coin; and the services shall have been rendered within forty days next preceding said assignment or the filing of said proceeding in insolvency.

**Estates of Deceased Persons.**—In case the services have been rendered before the death of the employer, his estate is liable for such wages in preference to all claims except the expenses of the last sickness.

**Workmen to Give Notice of Claim.**—In cases of executions, attachments and writs of a similar nature, issued against any person or company, such miners, mechanics, salesmen, servants, clerks and laborers, must give notice of their claims and the amount thereof, duly certified and sworn to by the creditor making the claim to the officer executing either of such writs, at any time *before* the actual sale of the property levied on, and such officer shall pay to such person making such claim, out of the proceeds of the sale, the amount each is justly and legally entitled to receive for services rendered *within forty days* preceding the levy of the writ of execution, attachment or other writ, not exceeding one hundred dollars in gold coin of the United States.

**Proceedings when Claim is Disputed.**—If the party against whom a claim is so made disputes the validity of the same, the person making such claim must commence an action within ten days in the proper court, to recover the same; and unless such suit be prosecuted with due diligence the claim will be barred from priority of payment.

## CALIFORNIA.

**Act of February 21st, 1868.**—Section 1. Eight hours'

labor shall be deemed and held to be a legal day's work, unless otherwise expressly stipulated between the parties concerned.

Sec. 2. Eight hours' labor shall constitute a legal day's work in all cases where the same is performed under the authority of any law of this state, or under the control or by the authority of any officer of this state, acting in his official capacity, or under the direction, control or by the authority, of any county or municipal government within this state, or of any officer thereof acting as such; and a stipulation to that effect shall be made a part of all contracts to which the state or any county or municipal government therein shall be a party.

Sec. 3. Any person or persons having in his, her or their, employ, or under his, her or their, control any minor child or children, either as wards or apprentices, who shall require of such minor child or children more than eight hours' labor in one day, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars; and in default of payment thereof shall be imprisoned in the county jail for a period not less than two days nor more than twenty days.

Sec. 4. The provisions of this act shall not extend to agricultural, vinicultural or horticultural, labor, or to the services of household or domestic servants, nor to any contracts already made, but not yet performed.

Sec. 5. An act entitled an act to limit the hours of labor, approved May 17th, 1853, is hereby repealed.

Sec. 6. This act shall take effect sixty days after its passage.

#### OREGON.

**There is no Law** on the subject, except that eight hours constitute a legal day's work on the public roads.

#### NEVADA AND IDAHO.

**There is no Law** on the subject of labor.

## FORMS.

*Contracts for Labor.*

Know all men by these presents, that I have this day bargained and agreed to work and labor for . . . . ., as porter in his store, from month to month, at the monthly wages of . . . . dollars, and board. Wages to be paid on the last day of each month.

[Date.]

Know all men by these presents, that I have this day bargained and agreed to employ . . . . ., as porter in my store, from month to month, at the monthly wages of . . . . dollars, and board. Wages to be paid on the last day of each month.

[Date.]

....., Clerk.

*Under Eight-hour Law.*

Know all men by these presents, that I have this day bargained and agreed to work and labor for . . . . ., at my trade—as carpenter and joiner—for such length of time as he may find employment for me, for the daily wages of . . . . dollars for each day's work. And it is expressly stipulated that under this agreement ten hours' labor, and no less, shall constitute a day's work.\*

[Date.]

If the agreement is to work a longer or shorter period than is stated in the above forms—so state in the agreement. If wages are to be paid in gold coin, it must be so set out in the agreement, or payment in legal tender notes will be legal.

*Notice of Claim—To be given to the Officer Attaching or Levying on Property.*

[Title of Cause.]

To [sheriff or other officer]: You are hereby notified that . . . . ., the defendant in the suit of . . . . . vs. . . . ., is indebted to me in the sum of . . . . hundred dollars in gold coin. Said sum is due me as wages earned by me as salesman in his store, No. . . . ., city of . . . ., which store and goods have been attached [or, "levied on"] by you in said suit, and are now in your possession. Said wages were earned by me within forty days preceding the day of said attachment [or, "writ of execution"].

Said sum is justly due, and I claim the same by virtue of an act of the legislature of the state of . . . ., entitled an act to protect the wages of labor. Approved . . . . ., 18..

[Signed]

.....

\* For amount of stamp required, see STAMPS.



State of .....  
                   county of.....}

....., being duly sworn, says, that the foregoing claim is just and true in every particular. . . . .

Subscribed and sworn to before me, this .... day of ..... 18..

.....;

Notary public.

[Date.]

## LACHES.

**Laches—Negligence.**—In general, when a party has been guilty of laches, in enforcing his right by great delay and lapse of time, this circumstance will prejudice and sometimes operate in bar of a remedy, which it is discretionary and not compulsory in the court to afford.

**Laches may be Excused** from ignorance of the party's rights, from obscurity of the transaction, by the pendency of a suit, and where the party labors under a legal disability, as insanity, coverture, infancy and the like.

## LANDLORD AND TENANT.

**Landlord and Tenant, Definition of.**—The term "landlord" is applied to one who furnishes the use and occupation of lands or tenements to another, who is called the tenant, for a compensation or return, which is termed rent. The right and condition or estate of the tenant, is called a tenancy. The respective relations of the parties are determined by the contract between them, which is named a lease. When such contract is expressed in writing, the written instrument is itself called a lease, and the parties described therein are respectively denominated lessor and lessee.

**Term of Lease.**—The period of time mentioned in the lease for which the tenant or lessee is to have the use of the property, is called the term.

**If the Term** be for one year or less, from the time of making the contract, a verbal lease or agreement to let, will be sufficient to bind the parties; but if the term be fixed for any longer period than one year, the lease must be

expressed in writing, duly executed under seal, and should be acknowledged.

**Agreement to Lease.**—If there be any agreement to make a lease at a future time, or if there be a lease made to commence at a future day, and such lease is for such a period of time that it will not expire within one year from the time of the contract, it must be in writing, and should also be acknowledged.

**Tenancies.**—Tenancies are for life, for years, at will and at suffrance.

**A Transfer** of lands or tenements, for the use of the tenant during his life, or the life of any other person, is a tenancy for life.

**The Ordinary Tenancy**, which is held under the usual lease or agreement to let, is called a tenancy for years; which may be for a number of years, or less than a year, a half year, a month, or even a few days. The principal distinguishing feature between a tenancy for years and a tenancy at will, or any other tenancy, is, that it be for a time certain, prefixed by agreement, either expressed or implied.

**Tenancy at Suffrance.**—Tenancy at suffrance, is a mere holding over of the land by one who came rightfully into possession. It cannot arise by contract, either express or implied; for, if the owner of the land were to assent to it, it would become a tenancy at will by means of that very assent.

**Tenancy at Will.**—A tenancy at will takes place where the demise or lease is for a certain term, but is to continue during the joint will of both parties. It may arise by implication, as, where a party agrees to buy a piece of land, and enters upon it before his deed is executed. Its more important incident, however, is its capability of being extended into a tenancy from year to year, which is the condition of most of the tenancies of the present day, where there is no written lease, or where the term under the written lease has expired and the tenant still continues to hold the premises with concurrence of the landlord. This tenancy derives its name from the circumstance that, in the

more important leases, the rent is prescribed for the year; and where the written lease has expired, or no written lease is made, and the tenant continues to occupy without any new lease, but with the assent of the landlord, he is considered as holding for another year. But the same designation and the same rules of law apply to the tenancy where the leasing is by the month, or week, or other period.

**How Terminated.**—To terminate such tenancy, due notice must be given. Formerly, in case of a tenancy at will, notice was not necessary. The later and more liberal rule seems to be, that tenants at will are regarded as holding from year to year, so far as to be entitled to notice to quit before they can be ejected by process of law.

The following statutory provisions of California law regulate the matter of notice :

ACT OF MAY 18TH, 1861.

**Statutory Provisions.**—Section 1. Wherever there is a tenancy at will or by sufferance, created by the tenant's holding over his term or otherwise, the same may be terminated by the landlord's giving one month's notice, in writing, to the tenant, requiring him to remove from the premises.

**Notice, How Served.**—Sec. 2. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or, if the tenant cannot be found, and there be no such person residing on the premises, such notice may be served by affixing the same on a conspicuous part of the premises, where it may be conveniently read.

**Landlord may Re-enter.**—Sec. 3. At the expiration of one month from the service of such notice, the landlord may re-enter, or maintain ejectment, or proceed in the manner prescribed by law to remove such tenant, without any other or further notice to quit.

**Notice by Tenant of Surrender and Penalty.**—Sec. 4. If any tenant shall give notice of his intention to quit the premises by him holden, and shall not accordingly deliver

up the possession thereof at the time in such notice specified, shall pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be sued for and recovered, at the same time and in the same manner as the single rent; and such double rent shall be continued to be paid during all the time such tenant shall continue in possession, as aforesaid.

**Notice by Landlord to Sub-tenant and Penalty.**—Sec. 5. If any tenant, or any other person who may have come into the possession of lands or tenements, under or by collusion with such tenant, shall wilfully hold over any lands or tenements, after the termination of such term, and after demand made, and one month's notice in writing, given in the manner hereinbefore prescribed, requiring the possession thereof by the person entitled thereto, such person holding over shall pay to the person so kept out of possession or his representatives, at the rate of double the monthly value of the lands or tenements so detained, for so long a time as he shall so hold over, or keep the person entitled out of possession; and shall also pay and remunerate all special damages whatever to which the person so kept out of possession may be subjected by reason of such holding over; and there shall be no relief in equity against any recovery had at law under this section.

**Assignment of Lease.**—If the tenant transfer his whole right to another, such transfer is called an assignment of the lease. If he make a transfer of a part of the term or of a portion of the premises, it is an under-lease.

It is Questionable whether a restriction in a lease against assignment can be enforced, so as to make a forfeiture in any case, as it is in restraint of alienation, and therefore against the policy of the law. In New York, it is well settled that it cannot be so enforced.

If a Lease contains a covenant not to assign, and the restriction is once removed, it operates as a removal of the restriction forever.

**When a Lessee makes assignment of the lease to another**

he is still liable to the lessor for the rent, unless the lessor accept the assignee as his tenant, either expressly or impliedly; as, by receiving rent from him as a tenant, and giving him receipt in his name. But it seems an assignee may assign over, even to an insolvent person, and free himself from all future liability.

**Use and Occupation.**—A sub-tenant is liable to the original lessor for use and occupation, or for rent, only for the time he actually occupied the premises.

**An Action for Use and Occupation** can only be maintained where the relation of landlord and tenant exists.

**When Void.**—All conveyances of land by lease or otherwise, made for more than ten years, and all conveyances of town or city lots, or other real property for a longer time than twenty years, except in fee and perpetual succession, are declared by our statute, to be void.

**When a Conveyance.**—A lease for a longer period than one year is considered a conveyance, under the statute in relation to recording conveyances, and must be recorded in the county where the premises lie, otherwise it will not be binding against a subsequent purchaser in good faith for a valuable consideration.

**Forfeitures.**—The questions arising as to forfeiture for non-payment of rent, the respective obligations of landlord and tenant, as to repairs and other matters of tenancies, etc., are determined very much by the character of the express covenants in the lease. The present object is, so far as these brief remarks extend, to treat more particularly of tenancies where there is no written lease, or where the lease does not contain covenants.

**Landlord's Rights.**—The chief rights of the landlord are, to have the stipulated compensation paid him for his property, and to have it properly treated while it remains out of his possession. The great and principal right of the tenant against the landlord is, to be maintained in the peaceable and quiet enjoyment of the property demised to him.

**Description of Premises.**—A description of premises in

a lease is sufficiently certain if the boundaries can be ascertained with a reasonable degree of certainty, and the lessee has occupied them under the lease.

**Obligation of Landlord.**—The landlord, in the absence of express agreement, is under an implied obligation to indemnify the tenant against eviction or disturbance by his own act, or the acts of those who claim under or paramount to him, but not against the tortious acts of third persons.

**Removal of Buildings.**—Tenants have a right to remove buildings erected by them, at any time before the expiration of their leases : *provided*, there be no forfeiture or re-entry for covenant broken.

**A Tenant who puts up machinery for a mill in a house leased, and fastens it by bolts, screws, etc., to the house, has the right to remove it; but as between vendor and vendee, such machinery would be considered as a part of the realty. See FIXTURES.**

**Who must Pay Rent in Certain Cases.**—When the owner of mortgaged premises leases the same for a term of years, and the rent is paid in advance by the tenant, the purchaser under the mortgage sale can require the tenant to pay the rent over again to him. After sale, and before redemption, in California, the purchaser is entitled to the rents.

**Right of Way.**—Where the owner of a building leases a portion, and has access to the part reserved without going through the part leased, he has no implied right of way to the part reserved, through any portion of the lessee's premises.

**Destruction of Premises.**—Without an express covenant to the contrary, the tenant is bound to continue the payment of rent, though the premises be destroyed by fire, and the landlord refuse to rebuild. If a lessee covenants to pay rent and to repair, with an express exception of casualties by fire, he may be obliged to pay rent during the whole term, though the premises are burnt down by accident, and never rebuilt by the lessor. Nor can he be relieved by a court of equity, unless perhaps the landlord has received

the value of his premises by insuring. And if he covenants to repair generally, without any express exceptions, and the premises are burnt down, he is bound to rebuild them.

**Repairs, Who Liable for.**—Unless there is an express covenant to repair on the part of the landlord, he is not liable for the cost of repairs. The tenant must repair at his *own expense*, unless his landlord voluntarily does so.

ACT OF MAY 27<sup>TH</sup>, 1863—CALIFORNIA.\*

**How Entry Made.**—Section 1. No entry shall be made into any lands, tenements, or other possessions, but in cases where entry is given by law; and, in such case, only in a peaceable manner, not with strong hand, nor with a multitude of people. [Same in Idaho.]

**Possession to be Restored.**—Sec. 2. Where any such forcible entry shall be made, or where the entry shall be made in a peaceable manner, and the possession shall be held by force, the person so forcibly put out, or so forcibly holden out, of possession, shall be restored to such possession by action to be commenced and prosecuted as in this act provided.

**Unlawful Detention.**—Sec. 3. It shall be unlawful for any person to hold over any lands, tenements or other possessions, after the termination of the time for which they may have been demised, or let to him or her, or to the person under whom he or she holds possession, or contrary to the covenants of the lease or agreement, under which he or she holds, or after any rent shall become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days after the same shall become due, as aforesaid.† [Same, substantially, in Idaho.]

\* In Nevada and Idaho, justices' courts have jurisdiction of these cases. In Nevada, the law is similar to that of California, as is noted in the proper places; but in Idaho, there is no statute similar to the California or Nevada, except as has been noted. The common law governs there, and a fine may be imposed for wrongful holding

† If a landlord sells the leased property, and assigns the lease to the pur-

**Demand of Possession and Proceedings.**—Sec. 4. In all cases specified in the preceding sections, the landlord may, at any time within one year after such rent shall become due and remain unpaid, or after any holding over contrary to the terms of such lease, make demand, in writing, of such tenant or tenants, that he, she or they, deliver the possession of the premises held as aforesaid; and, if such tenant or tenants shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, in case the term has expired, or the covenants or conditions of the lease require said premises to be surrendered, or to pay the rent, in case the term has not expired but rent remains unpaid, then such tenant or tenants shall be deemed guilty of an unlawful detainer.\* [In Nevada, the same, except the complaint shall be made to a justice of the peace, and any person who is the agent, representative or assign, may make the demand.]

**Demand for Rent may be Made at any Time.**—Sec. 5. It shall not be necessary, to work a forfeiture for the non-payment of rent, to make demand for rent on the day on which the same becomes due, or at any particular time of day, but demand may be made of the tenant, in person, at any time within a year after such rent shall become due, according to the terms of any lease or agreement, and may be made for the whole amount due and unpaid at the time of making such demand. And the failure on the part of the lessee or his assigns to pay such rent, upon such demand being made, shall have the same force and effect as if such demand had been made on the premises, toward sunset on the day when the rent became due. [Same in Nevada.]

chaser, and the tenant does not pay rent to or recognize him, as landlord, the purchaser cannot recover possession from the tenant, under this act. The right to remove a tenant, under this act, is in the landlord who made the lease, and not in his successors.

\* Demand of rent and delivery of possession may be made at the same time.



**Landlord to Give Notice when Terms of Lease are Changed.**—Sec. 6. In all leases of lands or tenements, or any interest therein, from month to month, the landlord may, and it shall be lawful for him, upon giving notice in writing, at least fifteen days before the expiration of the month, to change the terms of the lease, to take effect at the expiration of said month. Said notice, when served upon the tenant, shall, of itself, operate and be effectual to create and establish, as a part of the lease, the terms, rent and conditions, specified in said notice, if such tenant shall continue to hold such premises after the expiration of said month. In all leases of lands or tenements, or any interest therein, for a month, or any term less than one year, and the tenant holds over his term by consent of his landlord, the tenancy shall be construed to be a tenancy from month to month, or a tenancy for such term less than a year, as the case may be. [Same in Nevada.]

**Court having Jurisdiction.**—Actions for the recovery of the possession of any lands or tenements specified in this act, and for damages consequent upon any forcible entry or forcible detainer, or rent due, or damages accruing for holding over, or not surrendering the possession of any demised premises, as herein specified, shall be commenced and prosecuted in the county court of the county in which the said lands or tenements, or some portion thereof, may be situate.\* [Same in Nevada, except justices' courts have jurisdiction.]

#### OREGON.

**Who may Prosecute Action.**—Actions for the recovery of real property may be against any person acting as owner, landlord or tenant; and if the tenant is sued the landlord may be substituted on notice.

**Duty of Tenant.**—If the tenant defend, he must give the name and residence of his landlord in his answer.

**When the Landlord may Re-enter.**—When in case of a

\* The remaining portion of this act relates to the practice, and is not of general interest to the unprofessional reader.

lease of real property, and the failure of the tenant to pay rent, the landlord has a right to re-enter for such failure, he may bring an action to recover possession of the property, but if, at any time before judgment in such action, the lessee or his successor in interest pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to the possession, according to the terms of the lease.

**Mode of Procedure.**—The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided in the following cases :

1st. When any person shall hold over any lands or tenements, after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreements under which he holds.

2d. When any rent shall have become due, or any such lease or agreement, and the tenant or person in possession shall have neglected or refused, for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due.

3d. When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution after the expiration of the time limited by law for the redemption of such premises.

4th. When any tenant at will or by sufferance shall hold over after the determination of his estate by notice to quit, as provided by law.

**After Action brought, Tenant may Pay.**—When the action shall be brought to recover the possession of premises demised or let, for the reason that the tenant or person in possession, has refused or neglected to pay the rent due, it shall be lawful for the defendant, at any time before judgment, to pay to the justice for the plaintiff, the rent then in arrear, with interest and the costs of the action, and thereupon no writ of restitution shall be awarded.

**Void Leases.**—Whenever the lessee of any dwelling-house shall be convicted of keeping a house of ill-fame, the lease or contract for letting such house shall, at the option of the lessor, become void; and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

**Taxes paid by Tenant.**—When any tax on any real estate shall have been paid by or collected from any occupant or tenant, when there is some other person who, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover by action the amount which such person should have paid, with interest thereon; or he may retain the same out of any rent due or accruing from him to such person, for real estate on which such tax is so paid.

#### FORMS.

[Especially for Nevada and Idaho, prescribed by law.]

##### *Summons.*

The people of the state of .... to the sheriff or any constable of the county aforesaid :

Whereas, ...., of the county of ...., hath exhibited unto me, a justice of the peace for said county, a complaint against ...., of the county of ...., for the said ...., of the county of ...., on the .... day of ...., A.D. ...., at the county of ...., [here insert the substance of the complaint with sufficient certainty]. You are therefore commanded to summon the said ...., if he be found in your county, to be and appear before me at my office [or, stating the place], on the .... day of ...., A.D. ...., then and there to make answer unto the complaint aforesaid.

Given under my hand and seal, this .... day of .... A.D. ...

.....

Justice of the peace.

##### *Writ of Restitution.*

The people of the state of .... to the sheriff or any constable of the county aforesaid :

Whereas, ...., of the county of ...., at a court of inquiry of an unlawful or forcible entry, or unlawful detainer [as the case may be], held at my office [or, state the place], in the county aforesaid, on the .... day of .... A.D. ...., before me, a justice of the peace for the county aforesaid, by the consideration of the court, hath recovered judgment against ...., to have restitution of [here describe the premises, as in the complaint]. You are therefore commanded that, taking with you the force of the county, if

necessary, you cause the said . . . . . to be immediately removed from the aforesaid premises, and the said . . . . . to have peaceable restitution of the same; and you are also commanded that, of the goods and chattels of the said . . . . ., within said county, you cause to be made the sum of . . . . dollars, for the said plaintiff, together with the costs of suit indorsed hereon, and make return hereof within thirty days from this date.

Given under my hand, this . . . . day of . . . . A.D. . . . .

Justice of the peace.

#### GENERAL FORMS.

##### *Landlord's Agreement.*

This to certify that I, . . . . ., have, this . . . . day of . . . ., 18.., let and rented unto . . . . ., the house and premises known as . . . . ., in the . . . . of . . . . and the sole and uninterrupted use and occupation thereof, for . . . . months, to commence on the . . . . inst., at the monthly rent of . . . . hundred dollars, payable monthly in advance.

Given under my hand this . . . . day of . . . ., 18..

##### *Tenant's Agreement.*

This is to certify, that I, . . . . ., have, this . . . . day of . . . ., 18.., hired and taken from . . . . ., the house and premises known as . . . . ., in the . . . . of . . . . ., for . . . . months, to commence on the . . . . day of . . . ., 18.., at the monthly rent of . . . . hundred dollars, payable monthly, in advance. And I do hereby promise to make punctual payment of the rent in manner aforesaid. And I do further promise and agree to quit and surrender the premises at the expiration of the term in as good condition as reasonable use and wear thereof will permit, damages by the elements excepted. And I do hereby agree not to let or underlet the whole or any part of said premises, and that, in case of default in the payment of the rent above specified in manner aforesaid, or upon the expiration of the term above expressed, without requiring notice, or demand being made, it shall and may be lawful for said landlord, into and upon said demised premises, wholly to re-enter, and the same to have again, repossess and enjoy, as of the former estate, any thing herein contrary notwithstanding.

[Date.]

##### *Short Form of Lease.*

This indenture, made the . . . . day of . . . ., in the year one thousand eight hundred and . . . . ., between . . . . ., of the county of . . . . and state of . . . ., of the first part, and . . . . ., of the same place, of the second part, witnesseth, that the said party of the first part hath letten, and by these presents doth grant, demise and to farm-let, unto the said party of the second part, all that, etc. [here describe the premises intended to be let] with the appurtenances, for the term of . . . . year from this date, at the yearly rent of . . . . hundred dollars, to be paid monthly in advance. And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the cove-

nants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent as herein specified, namely, in monthly payments on the .... day of each month of the said term : and that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted ; and the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy, the said demised premises for the term aforesaid.

In witness whereof, we have hereunto set our hands and seals, this .... day of ...., one thousand eight hundred and ....

Sealed and delivered in the presence of

..... [L.S.]  
..... [L.S.]

*Agreement for a Lease.*

This agreement, made this .... day of ...., in the year eighteen hundred and ...., between ...., of ...., and .... of said city, merchant, witnesseth, that .... agrees, by indenture, to be executed on or before the .... day of .... next, to demise and let to the said ...., a certain house and lot in said city, now or late in the occupation of ...., known as No. .... in .... street, to hold to the said ...., his executors, administrators and assigns, from the .... day of ...., aforesaid, for and during the term of three years, at or under the clear yearly rent of .... dollars, payable quarterly, clear of all taxes and deductions except the ground rent. In which lease there shall be contained covenants on the part of the said ...., his executors, administrators and assigns, to pay the rent, (except in case the premises are destroyed by fire, the rent is to cease until they are rebuilt by the said ....), and to pay all taxes and assessments, (except the ground rent) ; to repair the premises, (except damages by fire) ; not to carry on any offensive business on the same, (except by written permission of the said ....) ; to deliver the same up at the end of the term, in good repair, (except damages by fire, aforesaid) ; with all other usual and reasonable covenants, and a proviso for the re-entry of the said ...., his heirs and assigns, in case of the non-payment of the rent for the space of fifteen days after either of the said rent-days, or the non-performance of any of the covenants. And there shall also be contained covenants on the part of the said ...., his heirs and assigns, for quiet enjoyment ; to renew said lease at the expiration of said term, for a further period of ..... years at the same rent, on the said ...., his executors, administrators or assigns, paying the said ...., his executors, administrators or assigns, the sum of ... hundred dollars, as a premium for such renewal ; and that in case of an accidental fire, at any time during the term, the said .... will forthwith proceed to put the premises in as good repair as before such fire, the rent in the meantime to cease. And the said

.... hereby agrees to accept such lease on the terms aforesaid. And it is mutually agreed that the cost of this agreement, and of making and recording said lease, and a counterpart thereof, shall be borne by the said parties equally.

As witness our hands and seals, the day and year first above written.

In presence of ..... [L.S.]  
 ..... [L.S.]

.....

#### *Landlord's Agreement of Lease.*

This is to certify that I have, this .... day of ...., 18.., let and rented unto Mr. ...., my house and lot, known as No. ...., in .... street, in the city of ...., with the appurtenances, and the sole and uninterrupted use and occupation thereof, for ... year, to commence the .... day of .... next, at the yearly rent of .... dollars, payable quarterly; rent to cease in case the premises are destroyed by fire.

.....

#### *Tenant's Agreement.*

This is to certify, that I have hired and taken from Mr. ...., his house and lot, known as No. ...., in .... street, in the city of ...., with the appurtenances, for the term of ... year, to commence the .... day of .... next, at the yearly rent of .... dollars, payable quarterly. And I do hereby promise to make punctual payment of the rent in manner aforesaid, except in case the premises become untenable from fire or any other cause, when the rent is to cease; and do further promise to quit and surrender the premises, at the expiration of the term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under my hand and seal, the .... day of ...., 18..

In presence of ..... [L.S.]

.....

#### *Security for Rent.*

In consideration of the letting of the premises above described, and for the sum of .... dollars, I do hereby become surety for the punctual payment of the rent, and performance of the covenants in the above written agreement mentioned, to be paid and performed by ...., as therein specified and excepted; and if any default shall be made therein, I do hereby promise and agree to pay unto Mr. .... such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said agreement, without requiring any notice of non-payment or proof of demand being made.

Given, etc. [as in TENANT'S AGREEMENT].

#### *Tenant's Agreement for a House, embracing a Mortgage of his Chattels.*

This is to certify, that I, ...., have hired and taken from ...., the premises known as No. ..., in ..... street, in the .... of ....., for

the term of .... year from the .. day of .... next, at the yearly rent of .... hundred dollars, payable quarterly. And I hereby promise to make punctual payment of the rent in manner aforesaid, and quit and surrender the premises at the expiration of said term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted; and engage not to let or underlet the whole or any part of the said premises, or occupy the same for any business deemed extra hazardous on account of fire, without the written consent of the landlord, under the penalty of forfeiture and damages. And I do hereby mortgage and pledge all the personal property, of what kind soever, which I shall at any time have on said premises, and whether exempt by law from distress for rent or sale under execution, or not, to the faithful performance of these covenants, hereby authorizing the said ...., or his assigns, to take possession of and sell the same, in case of any failure on my part to perform the said covenants, or any or either of them.

Given, etc. [as in TENANT'S AGREEMENT].

*Landlord's Agreement.*

This is to certify, that I, ...., have let and rented unto ...., the premises known as No. ..., in ..... street, in the .... of ....., for the term of .... year from the .. day of .... next, at the yearly rent of ... hundred dollars, payable quarterly. The premises are not to be used or occupied for any business deemed extra hazardous on account of fire, nor shall the same, or any part thereof, be let or underlet, except with the consent of the landlord, in writing, under the penalty of forfeiture and damages.

Given, etc. [as in TENANT'S AGREEMENT].

*Agreement for Part of a House.*

Memorandum of an agreement entered into, the .... day of ....., 18.., by and between ...., of ....., and ...., of, etc., whereby the said .... agrees to let, and the said .... agrees to take, the rooms or apartments, following, that is to say: an entire first floor, and one room in the attic story or garret, and a back kitchen, and cellar opposite, with the use of the yard for drying linen, or beating carpets or clothes, being part of a house and premises in which the said .... now resides, situate and being in No. ...., in ..... street, in the city of ....., to have and to hold the said rooms and apartments, and the use of the said yard, as aforesaid, for and during the term of ....., to commence from the .... day of ....., instant, at and for the yearly rent of .... dollars, lawful money of the United States, payable monthly, by even and equal portions, the first payment to be made on the .... day of .... next ensuing the date thereof; and it is further agreed that, at the expiration of the said term of ....., the said .... may hold, occupy and enjoy, the said rooms or apartments, and have the use of the said yard, as aforesaid, from month to month, for so long a time as the said .... and .... may and shall agree, at the rent above specified; and that each party be at liberty to

quit possession on giving each other a month's notice, in writing. And it is also further agreed, that when the said . . . . shall quit the premises, he shall leave them in as good condition and repair as they shall be on his taking possession thereof, reasonable wear excepted.

Witness, etc. [as in AGREEMENT FOR A LEASE].

*Lease of a House for . . . . Years.*

This indenture, made on the . . . . day of . . . ., one thousand eight hundred and . . . ., between . . . ., of the city of . . . ., merchant, of the first part, and . . . ., of said city, bookseller, of the second part, witnesseth, that the said party of the first part hath let, and by these presents doth grant, demise and let, unto the said party of the second part, his executors, administrators and assigns, all that brick house, messuage or tenement, with all and singular its appurtenances, situate in the . . . . ward of the city of . . . ., and known as No. . . ., in . . . . street, in said city, to have and to hold the said premises, with the appurtenances, unto the said . . . ., his executors, administrators and assigns, for the term of . . . . years from the . . . . day of . . . ., one thousand eight hundred and . . . ., at the yearly rent of . . . . hundred dollars, to be paid in equal quarterly payments, as long as the said premises are in good tenable condition. And the said party of the second part doth hereby covenant to pay to the said party of the first part, the yearly rent, as herein specified, save and except, at all times during the said term, such proportional part of the said yearly rent as shall grow due during such time as the house shall, without the hindrance of the said party of the second part, be and remain untenable, by reason of accidental fire. And that the said . . . ., his executors, administrators and assigns, shall and will, during the said term, at his own proper costs and charges, well and sufficiently keep in repair the said demised premises, with their appurtenances, when and as often as the same shall require, damages by fire only excepted. And that, at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by fire only excepted. And also, that he, the said party of the second part, his executors, administrators and assigns, shall and will, during the said term, pay and discharge all taxes, assessments and other charges, which shall be taxed, assessed or charged, upon the said premises or any part thereof. And the said party of the first part doth covenant that the said party of the second part, upon paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy, the said demised premises, for the term aforesaid, without any interruption or molestation of the said party of the first part, his heirs, or any other person whatever, claiming or to claim, by, from or under, him or them, or any of them. And also that, in case the said premises shall, at any time during the said term, be destroyed or injured by an accidental fire the said party of the first part, his executors, administrators or assigns, shall and will forthwith proceed to rebuild or repair the said premises, in as good condi-



tion as the same were before such fire; and that, until such repairs are made and completed, the said rent shall cease.

Given, etc. [as in TENANT'S AGREEMENT], and acknowledged.

*Agreement for Granting a Farming Lease.*

This agreement, made this .... day of ...., in the year ...., between ...., of ...., of the one part, and ...., of ...., of the other part, witnesseth, that the said .... shall, on or before the .... day of .... next, make and execute unto the said ...., his executors, administrators and assigns, a valid lease of all that messuage, piece or parcel, of land, situate, etc., with the appurtenances thereunto belonging, for the term of .... years, from the .... day of ...., at the yearly rent of .... dollars, payable half yearly, clear of all deductions for taxes, or on any other account whatever; the first payment of said rent to be made on the .... day of .... next; and at and under the further yearly rent of .... dollars per every acre, and so in proportion for a less quantity, of meadow or pasture ground, which shall be plowed or converted into tillage, contrary to a covenant to be contained in said lease, as hereinafter directed; the first payment of said last-mentioned rent to be made on the first half-yearly day after such conversion into tillage, as aforesaid. And in the said lease there shall be contained covenants on the part of the said ...., his executors, administrators and assigns, to pay the aforesaid rents, and to pay all taxes and assessments; for doing all manner of repairs to the buildings, hedges, ditches, rail and other fences; (the said .... providing upon the premises, or within two miles thereof, rough timber, bricks, tiles and lime, for the doing thereof, to be conveyed by the said ...., his executors, administrators or assigns); for permission for the said ...., his heirs or assigns, at all reasonable times, to view the state of the premises; that the said ...., his executors or administrators, shall not carry off from the farm any hay, straw or other fodder, and that the said ...., his executors, administrators or assigns, shall spread on some parts of the said lands, in a husbandlike manner, all the manure and compost which shall arise from the said farm, and shall, in all respects, cultivate the same in a husbandlike manner, and according to the usual course of husbandry practiced in the neighborhood, and shall leave all the manure and compost of the last year, for the use of the landlord or succeeding tenants. That the said ...., his executors, administrators or assigns, shall not cut or flash any of the quick hedge under three years' growth, and shall cut and flash those at seasonable times in the year, and at the time of doing thereof shall cleanse the ditches adjoining thereto, and guard and preserve the hedges, which shall be so cut and flashed as aforesaid, from destruction or injury by cattle, and shall also, at all times, guard and preserve all young hedges and young trees from the like destruction and injury. That the said ...., his executors, administrators or assigns, shall, in the summer immediately preceding the determination of the said term, to be granted as aforesaid, prepare for seed in a husbandlike manner, such part of the land as shall be in a course of fallow, and fit to be sown with a crop the ensuing season, and lay down with clover seed and rye-grass twenty acres of the arable land which shall be then in tillage, sowing upon each acre thereof ten

pounds of the best clover seed and one bushel of the best rye-grass seed. And in the said lease there shall be contained a proviso for re-entry by the said . . . . ., his heirs or assigns, in case of the non-payment of rent for the space of twenty days, or non-performance of the covenants. And there shall be contained covenants on the part of the said . . . . ., his heirs and assigns, for quiet enjoyment. That the said . . . . ., his heirs and assigns, shall permit the said . . . . ., his executors, administrators or assigns, to have the use of the great barn, the stable for four horses adjoining, and the stack-yard and farm-yard, until one month after the expiration or determination of the said term, for the convenience of threshing out the last year's crops of corn and grain, and feeding his or their cattle with the straw and fodder, so that the same may be made into manure, to be left on the said premises, as aforesaid; and also some convenient room in the farm-house for his or their servants to lodge and diet in, until the time aforesaid, without any recompense being made for the same respectively.

In witness, etc. [as in AGREEMENT FOR A LEASE].

*Notice to Quit, by the Landlord.*

To . . . . .

Take notice, that you are hereby required to quit and deliver up to me the possession of the premises now held and occupied by you, being the premises known as [or, "situated"] [description] at the expiration of the month [or, "week," or, "year," as may be] of your monthly tenancy of said premises, commencing on the . . . day of . . ., 18., and ending on the . . . day of . . ., 18..

This is intended as a month's notice to quit, for the purpose of terminating your tenancy aforesaid. . . . .

[Date.]

*Notice of Quitting Premises by Tenant.*

To . . . . ., landlord:

Please take notice, that I shall quit possession, and deliver up the premises now held and occupied by me, being the premises [description] at the end of the next month of my monthly tenancy of said premises, to wit: on the . . . day of . . ., 18., as I intend to remove therefrom, and to terminate the said tenancy.

Yours, etc., . . . . .

[Date.]

*Demand for Rent.*

To . . . . ., No. . . . ., street.

Demand is hereby made on you for . . . hundred dollars, the sum due me, from you, for the rent of my house, No. . . . ., . . . street, for the month ending . . . . ., 18., which you hold as my tenant. Said rent being for the month of . . ., 18..

[Date, etc.] . . . . .

*Demand for Possession.*

To . . . . ., No. . . . ., . . . . street

You are hereby notified to deliver up to me, forthwith, the possession of the premises now occupied by you, under lease from me, No. . . . ., . . . . street, described as follows : [here follows description], and demand for the possession of said premises is hereby made

[Date, etc.]

[Signed]

.....

*Notice of Change of Terms of Lease.*

To . . . . . Sir : Take notice that I have changed, and I do hereby change, the terms of the lease of the lands and tenements and the interest therein, which you now, from month to month, hold and occupy under lease from me, being the premises now occupied by you, to wit : the premises [description].

The change of the terms of said lease to take effect at the expiration of your present month, to wit : on the . . . . day of . . . ., A.D. 18.., and such change being as follows, to wit :

You will, after the expiration of your present month, hold said premises under lease from me, from month to month, as heretofore, but the rent of said premises will be the sum of \$ . . . . per month, due and payable monthly in advance, on the . . . . day of each and every calendar month, unless the . . . . day of any calendar month shall come on Sunday, in which case said rent shall be due and payable on the . . . . day of such calendar month.

Dated at . . . ., this . . . . day of . . . ., A.D. 18..

.....

LARCENY.

**Larceny.**—The wrongful and fraudulent taking and carrying away by one person of the personal goods of another from any place, with a felonious intent to convert them to his, the taker's, use. See **CRIMES AND PUNISHMENTS**.

LAW MERCHANT.

**Law Merchant.**—The general body of commercial usages in matters relative to commerce. They constitute a part of the general law of the land, and being *part of the law*, their existence cannot be proved by witnesses, but the judges are bound to take notice of them ; and this application is not confined to merchants, but extends to all persons concerned in any mercantile transactions.

## LAWFUL.

**Lawful.**—That which is not contrary to law. The term “legal” is occasionally used with reference to matters of form alone; thus, an *oral* agreement to convey land, though void by law, is not properly to be said to be unlawful, because there is no violation of in making or in performing such an agreement; but it is said to be not legal or not in lawful form, because the law will not enforce it for want of that written evidence required in such cases.

## LEADING QUESTIONS.

**Leading Questions.**—The questions which puts into the witness’ mouth the answer to be returned, or plainly suggests the answer which the questioner wishes to get from him.

**These Questions** cannot, in general, be put to a witness in his examination in chief. But in such examination questions may be put to lead the mind of the witness to the subject of inquiry; and they are allowed when it appears that the witness wishes to conceal the truth, or to favor the opposite party, or where from the nature of the case the mind of the witness cannot be directed to the subject of inquiry without a particular specification of such subject.

## LEASE

**Lease.**—A species of contract for the possession of lands, tenements or goods, for life, or a term of years or less. See LANDLORD AND TENANT.

## LEASE OF GOODS.

**What may be Leased.**—Goods, wares and merchandise, of all kinds may be leased the same as real estate; and such leases are quite common, especially of furniture, pianos and the like. Possession is given under the lease, and the lessee deals with the article as though it were his own. If

he sells it to an innocent purchaser the owner may recover it of him, as the purchaser took no better title than the vendor had at the time of the sale. This is not the case where the lessee trades in the kind of property leased. For example: A lets a piano to B for one month, and delivers possession. B sells and delivers the piano to C. A may recover it wherever he can trace it, and C must look to B to refund the price; or he may punish B for his fraud. But if B deals in pianos, the case is different, especially if he sells to C in the usual course of trade. In such case, C can hold possession against the true owner. If the true owner of leased property stands by and allows the lessee to offer the leased property for sale without proclaiming his ownership, he is estopped from asserting it against the purchaser.

## FORMS.

*Lease of Furniture or Goods.*

This indenture, made this .... day of ..... 18.., between ...., of ....., and ....., of ....., witnesseth:

That in consideration of the rents and agreements-to be paid and performed on the part of the said ....., the said .... does hereby lease to the said ....., the household furniture [or, "goods"], described as follows:

2 Looking glasses.....	marked A B on the back.
1 Bureau.....	" A B on the back.
1 Grecian table.....	" A B under the leaf.
12 Mahogany chairs.....	" A B under the seat.
12 Silver tea spoons.....	" A B on the handle.
1 Piano.....	" A B on the back.
2 Kidderminster carpets.....	" A B in the corner.

To have and to hold the same to the said lessee, for the term of .... years, from the date hereof, the said lessee paying therefor the yearly rent of .... dollars during the said term.

And the said lessee covenants with the said lessor, that he will pay the rent aforesaid, in monthly payments of .... dollars each, on the .... day of each month, during said term, and for such further time as the lessee may hold the same; and that he will not assign nor underlet the said ....., nor any part thereof, without the written consent of said lessor; and that he will at his own expense replace any and all of said .... which shall be lost, or carelessly or accidentally injured during the said term; and at the expiration thereof, or the sooner termination of this lease, he will restore the said .... to the said lessor, in the like good order in which they now are, wear and diminution resulting from reasonable use and unavoidable casualties excepted.

And it is agreed that, until condition broken, said . . . . . shall peaceably retain possession of said chattels.

In witness whereof, the said parties have hereunto, etc.

In presence of . . . . . [L.S.]  
 . . . . . [L.S.]  
 . . . . .

*Another Form.*

This indenture, made this . . . . day of . . . ., A.D. 18.., between . . . . ., of the . . . . of . . . ., and state of . . . ., party of the first part, and . . . . ., of the same place, party of the second part, witnesseth:

That the said party of the first part, hereby lease, demise and let, unto the said party of the second part, the personal property mentioned and described in the annexed schedule.

To have, hold, use and enjoy, the same, unto the said party of the second part only (and not to . . . . heirs, executors, administrators or assigns, or other legal representatives, in any way or manner whatever), for and during the term of . . . . months from and after the . . . . day of . . . ., A.D. 18.., at the monthly rent of . . . . dollars, payable . . . . monthly in advance, at . . . .

The said party of the second part shall have the right and privilege of purchasing the said property of the said party of the first part at any time during the said term, by paying therefor the sum of . . . . dollars; and until such payment shall have been fully made, exclusive of the rents aforesaid, no sale shall be deemed to have been made, and all partial payments towards said purchase shall be forfeited, and become absolutely the property of the party of the first part, unless the full payment of the purchase money be made within the term aforesaid.

And it is further agreed that this indenture shall cease, determine and become void, and all the rights and privileges therein secured to the said party of the second part shall be forfeited, and the said party of the first part, without reclamation or recoupment in favor of the said party of the second part, shall be the owner of, and be entitled to the possession of all the said property, on the happening of any one or more of the following events or contingencies, to wit:

1st. If the rent or any portion thereof shall not be paid at the time and in the manner mentioned.

2d. If the said property or any part thereof shall be used for any other purpose, or in any other manner than the ordinary ones for similar property, or if the same or any part thereof shall be misused or injured beyond the natural wear and tear, or if there shall be for any cause imminent danger of its loss or serious damage.

3d. If the said party of the second part shall for any cause part with, or threaten or attempt to part with, or shall for any cause be deprived of, or be in danger of being deprived of, the actual personal possession, custody and control, of said property or any part thereof.

While the said property remains in the possession of the said party of the

second part it shall be at .... risk, against fire and all other accidents and casualties whatsoever.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

In presence of

..... [L.S.]

..... [L.S.]

.....

## LEGACY.

**Legacy.**—A gift by last will.

**An Absolute Legacy** is one given without condition, to vest immediately.

**An Additional Legacy** is one given to a legatee to whom a legacy has already been given.

**An Alternative Legacy** is one by which the testator gives one of two or more things, without designating which.

**A Conditional Legacy** is a bequest whose existence depends upon the happening or not happening of some uncertain event, by which it is to take place or be defeated.

**A Demonstrative Legacy** is a bequest of a certain sum of money, with reference to a particular fund for payment.

**A General Legacy** is one so given as not to amount to a bequest of a particular thing or money of the testator, distinguished from all others of the same kind.

**An Indefinite Legacy** is a bequest of which are not enumerated or ascertained, as to numbers or quantities; as, a bequest by a testator of all his goods or all his stocks.

**A Lapsed Legacy** is one which, in consequence of the death of the legatee before the testator or before the period of vesting, has never vested.

**A Legacy for Life** is one in which the legatee is to enjoy the use of the legacy for life.

**A Model Legacy** is a bequest accompanied with directions as to the mode in which it should be applied for the legatee's benefit.

**A Pecuniary Legacy** is one of money.

**A Residuary Legacy** is a bequest of all the testator's personal estate not otherwise effectually disposed of by his will.

**A Specific Legacy** is a bequest of a specified part of the testator's personal estate, distinguished from all others of the same kind. See **WILLS**.

## LEGAL TENDER.

**Legal Tender.**—That currency which has been made suitable by law for the purposes of a tender in the payment of debts.

The following descriptions of currency are legal tender in the United States :

**All the Gold Coins** of the United States, according to their nominal value, for all sums whatever.

**The Silver Dollar** of the United States is a legal tender for all sums whatever.

**The Silver Coins**, below the denomination of the dollar, coined prior to 1854, are a legal tender for the payment of any sum whatever.

**The Silver Coins below the Dollar**, of the date of 1854, and of subsequent years, are a legal tender in sums not exceeding five dollars.

**The Three-cent Silver Coins**, of the dates of 1851, 1852 and 1853, are a tender in sums not exceeding thirty cents. Those of subsequent dates are a legal tender in sums not exceeding five dollars.

**The Cent** is not a legal tender.

**Treasury Notes** are a legal tender for all debts, public and private, except duties on imports and interest on the public debt.

**The Postage Currency** is receivable in payment of all dues to the United States less than five dollars. They are not a legal tender in payment of private debts.



## LETTER OF CREDIT.

**Letter of Credit.**—A letter of credit is a writing given by one person to another, either with or without consideration [sometimes introducing the person receiving it], inviting the person to whom it is directed to give the person receiving it credit for money advances or goods, on the responsibility of the writer. Or it may direct the person to whom it is directed to advance money or goods to the person receiving it on account of the writer. See GUARANTY.

## FORM.

*Letter of Credit.*

[Date.]

Messrs. .... &amp; Co.—Gentlemen :

Please deliver to ...., of this place, goods, silks and merchandise, to any amount not exceeding .... dollars, and I will hold myself accountable to you for the payment of the same, in case .... should fail to make payment therefor.

You will please to notify me of the amount for which you may give him credit; and if default should be made in the payment, let me know it immediately.

I am, gentlemen, your most ob't servant,

.....

Messrs. .... & Co.,  
No. ...., .... }

[Or, it may read :] Please deliver to .... & Co., any amount of money not exceeding the sum of ...., and charge the same to my account; [or, "Please deliver to .... & Co., goods to any amount not exceeding .... dollars, and charge the same to my account"].

.....

## LETTER OF LICENSE.

**Letter of License.**—An agreement by creditors not to sue a failing debtor within a time specified, is sometimes called a "Letter of License." It gives the debtor time to meet his engagements, prevents the statute of limitation from running against them, and at the same time does not release the debt. Its only effect is to extend the time of payment. It only binds such as sign the agreement. Those who are not parties to it may sue to collect their debts in the usual mode.

## FORM.

*Agreement not to Sue a Debtor.*

Know all men by these presents, that whereas . . . . ., of the . . . of . . . , in the county of . . . , and state of . . . , is justly indebted to us, . . . . ., . . . . ., . . . . . and . . . . ., in divers sums of money, which the said . . . . . is unable to pay :

Now, therefore, we do hereby grant unto the said . . . . . full liberty and license to attend to, follow and negotiate, any business or affairs whatsoever, without any suit, trouble or hindrance, from us or any of us, for the space of . . . . . from the date hereof.

And we and each of us, for ourselves, our and each of our heirs, executors, administrators and assigns, for and in consideration of the agreement and covenant of the said . . . . . hereinafter contained, do covenant and agree with the said . . . . ., that we will not, nor will either or any of us, at any time during the said space of . . . . ., sue, prosecute, arrest, molest or trouble, the said . . . . ., in respect or on account of any debts now by him due to us, or any or either of us.

And the said . . . . ., in consideration of the foregoing covenant and agreement, for himself, his heirs, executors or administrators, covenants and agrees with the creditors aforesaid, that he will faithfully apply all moneys, property and effects, that he may earn or procure during the said term of . . . . ., to the payment of his debts owing to the creditors aforesaid, in proportion to the amount due and owing to each.

In witness whereof, we have hereunto set our hands and seals, this . . . day of . . . , one thousand eight hundred and . . .

. . . . . [L.S.]  
 . . . . . [L.S.]  
 . . . . . [L.S.]  
 . . . . . [L.S.]

Witness :

. . . . .  
 . . . . .

## LEVY.

**Levy.**—A seizure ; the raising of the money for which an execution has been issued.

In order to make a valid levy on personal property the sheriff must have it within his power and control, or at least within his view ; and, if having it so, he makes a levy upon it, it will be good if followed up afterwards within a reasonable time by his taking possession in such a manner as to apprise everybody of the fact of its having been taken into execution. The usual mode of making levy upon real estate is to describe the land which has been seized under the execution by metes and bounds, as in a deed of conveyance. See EXECUTION.

## LIBEL AND SLANDER.

**Libel and Slander.**—There is no branch of law more difficult to reduce to exact principles, or to compress within a small compass, than the law of libel and slander.

**The following are Libel:** To publish a ludicrous story of an individual in a newspaper, if it tend to render him the subject of ridicule.

**Charge of Unworthiness.**—To write of a person soliciting relief from a charitable society, that he is unworthy, or that he squanders the money received.

**Against Doctors or Attorneys.**—To charge a doctor or attorney of sharp or disreputable practice ; or, in short, to publish of any person any thing calculated to bring such person into contempt or ridicule, or to hold him up to public scorn.

**Against the Memory of the Dead.**—Libels against the memory of the dead, which have a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult to the family, render their authors liable to indictment.

**Reading of Libels and Proof.**—The malicious reading of a libel to one or more persons is a libel, and each reading is a separate offense. The reading must be malicious ; evidence of the malice may be either express or implied. Express proof is not necessary, for where a man publishes [reading to others is a publication] a writing which on the face of it is libelous, the law presumes he does so from that malicious intention which constitutes the offense, and it is unnecessary to prove any circumstances from which malice may be inferred. [These rules do not apply to answers in courts of justice, in reply to questions asked.]

**Under Statutes.**—By the laws of California, Nevada, Idaho and Oregon, an indictment lies for a libel as well as a civil action.

**The following are from the provisions of the California, Nevada and Idaho, civil practice acts :**

In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

In the Actions mentioned above, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

## LIEN.

**Lien.**—A hold or claim which one person has upon the property of another as a security for some debt or charge.

**Different Classes entitled to Liens.**—*Innkeepers* may detain a horse for his keeping if he belong to a guest. They may detain the goods of a traveler, but not of a boarder. *Warehousemen* and *tailors* have liens on goods left with them to keep or make up. *Common carriers* and *bailees* for hire have liens for charges. An *agister of cattle* has no lien; nor a *livery-stable keeper*. *Clerks of courts* have a lien on papers for their fees. *Bankers* have a lien on all securities left with them by their employers. *Factors* and *brokers* have a lien on goods and papers. The *vendor of goods* for the price, so long as he retains possession. *Pawnees*, from the very nature of their contract, but only when the pawner had authority to make such pledge. See COMMON CARRIERS—AGISTER and BROKERS.

**Requisites as to Creation.**—In all these cases, to give rise to the lien, there must have been a delivery of the property; it must have come into the possession of the party claiming the lien, or his agent.

**Waiver of Lien.**—Possession is a necessary element of

liens on personal property; and if the creditor once knowingly parts with the possession after the lien attaches, the lien is gone. A lien cannot be transferred, but property subject to a lien may be delivered to a third person, as to the creditor's agent or employé, so as to preserve the lien.

## LIEN, MECHANICS'.

### CALIFORNIA.\*

**Who may have Lien.**—Section 1. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, miner, laborer and other person, performing labor upon or furnishing materials of any kind to be used in the construction, alteration or repair, either in whole or in part, of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power for mining or other purposes, or any other structure or superstructure, or who shall perform labor in any mining claim, shall have a lien upon the same for the work or labor done, or materials furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, sub-contractor, architect, builder, or other person having charge of any mining, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner, for the purposes of this act.

**Subject of Lien.**—Sec. 2. The land upon which any building or other improvement, as aforesaid, shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, shall also be subject to the liens created by this act, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the said land belonged to the person who caused said

\* Passed by the legislature of the state of California, 1867-8, entitled "An act for securing liens of mechanics and others," approved March 30th, 1868.

building or other improvement to be constructed, altered or repaired ; but, if such person owned less than a fee simple estate in such land, then only his interest therein shall be subject to such lien ; and, in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his right thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this act, shall be held to be the assignee of such leasehold term, and, as such, shall be entitled to pay the lessor all arrears of rent or other money and cost due under said lease, unless the lessor shall have regained possession of the said land or property, and obtained judgment for the possession thereof prior to the commencement of the construction, alteration or repair, of the building or other improvement thereon ; in which event, said purchaser shall have the right only to remove the building or other improvement within thirty days after he shall have purchased the same ; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

**Liens Preferred, etc.**—Sec. 3. All liens created by this act, upon any land or mining claim, shall be preferred to any lien, mortgage or other incumbrance, which may have attached to said land or mining claim subsequent to the time when the building or other improvement was commenced, or the materials were begun to be furnished ; also, to any lien, mortgage or other incumbrance, which was unrecorded at the time when said building or other improvement was commenced, or the materials for the same were commenced to be furnished ; and all liens created by this act upon any building or other improvement, shall be preferred to all prior liens, mortgages or other incumbrances, upon the land upon which said building or other improvement shall have been constructed or situated, when altered or repaired ; and, in enforcing such lien, such building or other improvement may be sold separately from said land ; and, when so sold, the purchaser may remove the same

within a reasonable time thereafter, not to exceed thirty days, upon the payment to the owner of the land of a reasonable rent for its use from the date of his purchase to the time of removal: *provided*, that, if such removal be prevented by legal proceedings, said thirty days shall not begin to run until the final determination of such proceedings in the court of first resort or in the appellate court, if appeal be taken.

**Construction at the Instance of Owner.**—Sec. 4. Every building or other improvement mentioned in the first section of this act, constructed upon any lands with the knowledge of the owner, or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claim shall be subject to any lien filed in accordance with the provisions of this act, unless such owner or person having or claiming an interest therein, shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect, in some conspicuous place upon said land or upon the building or other improvement situated thereon.

**Statement to be Filed, When.**—Sec. 5. It shall be the duty of every original contractor, within sixty days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, miner, laborer or other person, save the original contractor, claiming the benefit of this act, within thirty days after the completion of any building, mining claim or other improvement, or the performance of any labor in any mining claim, or after the completion of the alteration or repair thereof, to file with the county recorder of the county in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and effects, with the name of the owner or reputed owner, if known, and also the name of the

person by whom he was employed, or to whom he furnished the materials, and also a description of the property to be charged with said lien, sufficient for identification, which claim shall be verified by the oath of himself or of some other person.

**Recording of Claim.**—Sec. 6. The county recorder shall record said claim in a book kept by him for that purpose, which record shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

**Separation of Claim.**—Sec. 7. In every case in which one claim shall be filed, under the provisions of this act, against two or more buildings, mining claims or other improvements, owned by the same person, the person filing such joint claim shall at the same time designate the amount due to him on each of such buildings, mining claims or other improvements, otherwise, such claim shall be postponed to other lienholders, and the lien of such claimant shall not extend beyond the amount so designated, as against other creditors having liens by judgment, mortgage or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated: *provided*, that no joint claim shall be filed upon two or more buildings, unless they are contiguous to or adjoining each other.

**Duration of Lien.**—Sec. 8. No lien provided for in this act shall bind any building, mining claim or other improvement, for a longer period than ninety days after the same shall have been filed, unless suit be brought in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit. But no lien shall be continued in force for a longer time than two years from the time the work is completed by any agreement to give credit.

**City or Town Lots, Lien for Grading of.**—Sec. 9. Any person who shall at the request of the owner of any lot in



any incorporate city or town, grade, fill in or otherwise improve, the same, or the street in front of or adjoining the same, shall have a lien upon such lot for his work done and materials furnished in grading, filling in or otherwise improving, the same; and all the provisions of this act respecting the securing and enforcing of mechanics' liens shall apply thereto.

**Suits to be brought, When, etc.—Sec. 10.** 1st. Suits to enforce the liens created by this act, except those under section fifteen, shall be brought in the district courts; and the pleadings, process, practice and other proceedings, shall be the same as in other cases: *provided*, that where service of summons may be made under the practice act by publication, the time of publication, where the defendant resides out of, or is absent from, the state, or for any other cause, can not be served personally, and [need] be but once a week for four successive weeks, and the time for answering shall expire when such publication is complete, and if no answer of such defendant is then filed, his default may be entered; and, *provided*, also, that the court may in its discretion, in all cases under this act, instead of ordering publication, or may after publication, appoint an attorney to appear for the non-resident, absent or concealed, defendant, and conduct the proceedings on his part.

**Order of Payment of Liens.—2d.** In case the proceeds of any sale under this act shall be insufficient to pay all lienholders under it, the liens of all persons other than the original contractor and sub-contractors shall first be paid in full, or *pro rata*, if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the sub-contractors shall then be paid in full or *pro rata*, if the remainder be insufficient to pay them in full; and the remainder, if any, shall be paid to the original contractor; and each claimant shall be entitled to execution for any balance due him after such distribution, such execution to be issued by the clerk of the court upon demand, after the return of the sheriff or other officer making the sale showing such balance due.

**Attorney's Fees Allowed.—3d.** In all suits under this

act the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien, and also a reasonable amount as attorney's fees.

**Preference upon Calendar.**—4th. All suits to enforce any lien created by this act shall have preference upon the calendar of the court over any civil suit already brought or to be brought, except suits to which the state shall be a party, and shall be tried by such court without unnecessary delay.

**Parties to Actions.**—5th. In all suits to enforce any lien created by this act, all persons personally liable, and all lienholders whose claims have been filed for record under the provisions of section five of this act, shall, and all other persons interested in the matter in controversy, or in the property sought to be charged with the lien, may be made parties; but such as are not made parties shall not be bound by such proceedings.

**Recovery by Contractor.**—Sec. 11. Any contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a lien shall be filed under this act for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

**Materials not Subject to Attachment.**—Sec. 12. When-

ever any mechanic, artisan, machinist, builder, lumber merchant, contractor, miner, laborer or other person, shall have furnished or procured any materials for use in the construction, alteration or repair, of any building or other improvement, such materials shall not be subject to attachment, execution or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as, in good faith, the same are about to be applied to the construction, alteration or repair, of such building, mining claim or other improvement.

**Personal Action may be Maintained.**—Sec. 13. Nothing contained in this act shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished, to maintain a personal action, to recover said debt, against the person liable therefor; and the person bringing such personal action may take out an attachment therefor, notwithstanding his lien, and in his affidavit to procure an attachment need not state that his demand is not secured by a lien; but the judgment, if any, obtained by the plaintiff in such personal action, shall not be construed to impair or merge any lien held by said plaintiff under this act: *provided*, only, that any money collected on said judgment shall be credited on the amount claimed under such lien in any action brought to enforce the same, in accordance with the provisions of this act.

**Building or other Improvement, to include What.**—Sec. 14. The words "building or other improvement," whenever the same are used in this act, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration or repair," whenever the same are used therein, shall be held to include partial construction and all the repairs done in and upon any building or other improvement.

**Personal Property Liens for Repairs.**—Sec. 15. Any mechanic, artisan or laborer, who shall make, alter or repair, any article of personal property, at the request of the owner or legal possessor of such property, shall have a lien on the same for his just and reasonable charges for work done and materials furnished, and may retain possession of the same until such just and reasonable charges shall be paid; and, if not paid within the space of two months after the work shall be done, such mechanic or other person may proceed to sell the property by him so made, altered or repaired, at public auction, by giving ten days' public notice of such sale by advertising in some newspaper published in the county in which the work was done, or, if there be no newspaper published in such county, then by posting up notices of such sale in three of the most public places in the town where such work was done, for ten days previous to such sale, and the proceeds of such sale shall be applied to the discharge of such lien and the cost of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

**Liens before Acquired.**—Sec. 16. Nothing contained in this act shall affect any lien heretofore acquired, but the same may be enforced by the provisions of this act; and, where suits are now pending, the proceedings, after this act goes into effect, may be conducted according to this act.

**Acts Repealed.**—Sec. 17. An act entitled "An act for securing liens of mechanics and others," approved April 27th, 1855; an act entitled "An act for securing liens of mechanics and others," approved April 19th, 1856; an act entitled "An act in addition to and explanatory of an act for securing liens to mechanics and others, approved April 19th, 1856," approved March 4th, 1857; an act entitled "An act supplementary to an act for securing liens to mechanics and others, passed April 19th, 1856," approved March 18th, 1857; an act entitled "An act to amend an act for securing liens to mechanics and others, passed April 19th, 1856," approved April 22d, 1858; an act enti-

tled an act to amend an act entitled an act for securing liens of mechanics and others, passed April 19th, 1856," approved May 17th, 1861; an act entitled "An act in relation to liens of mechanics and others," approved April 26th, 1862, are hereby repealed.

## NEVADA.

**Who Entitled to Lien** [Under act approved November 21st, 1861].—All artisans, builders, mechanics, lumber merchants, and all other persons performing labor or furnishing materials, to the amount of *twenty-five dollars*, for the construction or repairing of any building or other superstructure, shall have a lien on such building or superstructure for the work and labor done, or material furnished by each, respectively.

**Same**—[Under act approved February 12th, 1869].—All foundrymen and boiler-makers, and all other persons performing labor, or furnishing machinery, or boilers, or castings, or other material for the construction or repairing, or carrying on of any mill, manufactory or hoisting works, shall have a lien on such mill, manufactory or hoisting works, for such work or labor done, or for such machinery, or boiler, or castings, or other material furnished by each respectively.

**Same**—[Under act approved February 6th, 1867].—All miners or other persons performing labor to the amount of twenty dollars or upwards, for any organized or incorporated company, or for the owner or owners of any lode, ledge or ledges, of gold or silver-bearing quartz, ore, pay-dirt or rock, or of any other metal of value, or for the person or persons in the actual possession of such lode or lodes, ledge or mine, by himself or themselves, under *bona fide* claim of ownership, he or they shall have a lien upon said lode or lodes, ledge or mine, together with all the improvements thereon.\*

**Notice of Lien to be Filed.**—The original contractor

\* All the amendments make the general act of November 21st, 1861, applicable.

must file a notice of lien, with a description of the property charged with it, in the county clerk's office of the county where the property is situated, within sixty days after the completion of the building or work. If such lien is claimed by a sub-contractor, journeyman or other person, except the contractor performing labor or furnishing materials, the account aforesaid must be filed within thirty days after the work was done or the materials furnished by him. Within five days after filing such account he shall serve a copy on the owner of such building or superstructure.

**Laborer's Lien.**—Every sub-contractor, journeyman, laborer or other person, performing labor or furnishing materials, has a valid lien upon the premises regardless of the claims of the contractor. The owner may reserve money due the contractor until all sub-liens are paid.

**Lien on Land.**—The land upon which any building or superstructure is erected is liable for the work done.

**Limitation.**—No lien binds any building or land for a longer period than six months after filing the same, unless suit be brought in the proper court within that time to enforce the same, or if a credit be given, within six months after the expiration of the credit; but no lien shall be continued for a longer period than two years from the time the work is complete.

#### IDAHO.

**Who Entitled to Lien.**—[Under act approved December 17th, A.D. 1864].—All artisans, builders, mechanics, lumber-merchants and all other persons, performing labor or furnishing material to the amount of *twenty-five dollars*, for the construction or repairing of any building or other superstructure, shall have a lien on such building or superstructure for the work and labor done or material furnished by each, respectively.

**Miners' Liens.**—[Under act approved Jan. 10th, 1869].—When any person or persons shall do or perform any work or labor in or upon any quartz claim or ledge in working the same or in the improvement or development thereof,

or in the preparation of the ores thereof for reduction, or in hauling or reducing the ores thereof, or shall furnish any materials therefor, or shall perform labor as a mechanic therefor, such person or persons shall have a lien upon all the interests in such quartz claim or ledge, of the person or persons employing him or them, or purchasing such materials, together with the improvements thereon and appurtenances, for the value of such work or labor, or materials furnished: *provided*, the person or persons claiming such liens shall, within forty days after the completion of such work or labor, or materials when furnished, file their lien in other respects as provided by law.

**Repairs and Making of Personal Property.**—The law of Idaho is the same as the fifteenth section of the California act, except in Idaho the notice must be published for *three weeks* in some newspaper published in the county where the work is done. See Sec. 15, MECHANICS' LIEN LAW, California.

**In other Respects.**—For the law on this subject, in other respects, see MECHANICS' LIENS, Nevada.

#### FORMS.

##### *Builder's Contract.*

Articles of agreement, made this .... day of ...., in the year one thousand eight hundred and ...., between ...., of the .... of ...., party of the first part, and ...., of the same place, of the second part, witnesseth as follows, viz:

1st. The said party of the second part, for and in consideration of the payments hereinafter agreed and covenanted to be made by the said party of the first part to the said party of the second part, doth hereby covenant and agree with the said party of the first part, that he shall and will erect and finish the building following, namely: That new building to be erected on ...., in the .... of ...., described in the plan, drawing and specifications, hereunto annexed, and that said building shall be so erected and finished according to the said plan, drawings and specifications, hereto annexed, made by ...., architect, which plan, drawings and specifications, hereto annexed, are signed by the parties hereto, and are referred to by and form a part of this agreement. And the said party of the second part hereby covenants with the party of the first part, that he will perform and execute the said work in a good, workmanlike and substantial, manner, and will find and provide such proper and sufficient materials of all kinds whatsoever as shall be proper and sufficient, and as required by said specifications for completing

and finishing the foundation, walls, floors, ceilings, roofings and other works, of the said building mentioned in the said annexed specifications, and that said work and said materials shall, in every respect, be strictly according to said plans, drawings and specifications, and of the kind of workmanship and kind of materials therein mentioned, and none other—it being understood that said specifications and drawings are intended to co-operate, so that any works exhibited in the drawings and not mentioned in the specifications, or *vice versa*, are to be executed the same as if they were mentioned in the specifications and set forth in the drawings, according to the true intent and meaning of said drawings and specifications. And the said party of the second part hereby covenants and agrees with the said party of the first part, that he will well and sufficiently erect and finish said building according to the covenants and agreements herein contained, on or before the .... day of ...., in the year one thousand eight hundred and ....

2d. The said party of the second part is, at his own proper cost and charges, to provide all manner of materials and labor, scaffolding, implements, molds, models and cartage, of every description, for the due execution of this contract, and to bear all risk or loss by accidents, delays, encroachments or otherwise, not caused by or through any act of the party of the first part.

3d. Should the party of the first part, at any time during the progress of said work, require any alterations, extra work, deviations or omissions, from the work so contracted to be done, he shall be at liberty to do so, and the same shall in no way affect or make void this contract; but the value thereof will be added to or deducted from the amount to be paid by him by the terms of this contract, as the case may be, according to a fair and reasonable valuation.

4th. Should the party of the second part, at any time during the progress of the said work, refuse or neglect to supply a sufficiency of material or workmen so as to render it impracticable to finish said work within the time said party of the second part has by this contract covenanted to complete the same, the said party of the first part shall have the power to provide the necessary materials or workmen or both, after one day's notice in writing being given to the party of the first part to provide the same; and the expense of such supply, by the party of the first part, shall be deducted from the amount to be paid for said work, by said party of the first part.

5th. Should any dispute arise concerning the true construction or meaning of the plans, drawings or specifications, the same is hereby submitted to and shall be decided by said architect, and his decision thereon shall be final; but should any dispute arise respecting the true value of any extra work or materials, or work or materials omitted, the same shall be valued by two competent persons, one to be nominated by the party of the first part, and the other by the party of the second part; and in case of disagreement between said persons so chosen on said subject matter so submitted, they shall have power to appoint an umpire, whose decision shall be binding on both parties hereto, and no recourse shall be had to law, but such award shall be final and conclusive on the matters so submitted.

6th. The said party of the first part shall not in any manner be answer-



able or accountable for any loss or damage that shall or may happen to the said work or any part or parts thereof, respectively, or any of the materials or other things used and employed in finishing and completing the same, during the time of said erecting and completing, except that the party of the first part shall be liable for and take all risk by fire.

7th. No extra work is to be paid for, unless the price has been fixed and agreed upon in writing by the parties hereto, and the work specified and the agreement made for the same at the time the extra work is done, and no reductions or omissions are to be allowed without the price is fixed by agreement in writing at the time said omissions or reductions are made.

8th. There shall be a forfeiture of .... dollars per day for each and every day over the stated time for the completion herein mentioned, to be deducted out of the last payment. But, if the weather is so wet or inclement as to hinder the progress of the work, a reasonable additional time is to be allowed by the party of the first part for the completion of the same. In all cases of extra materials and work done on said job during this contract, then the time expressed above shall not govern, but a reasonable additional time necessary for completing said extras shall be allowed. The nature, extent and price, of all extras, as may be agreed upon, are to be entered in a written memorandum, to be attached to the contract and signed by the parties hereto, and the same course is to be followed in reference to all omissions or reductions.

9th. In consideration of the faithful performance, by the said party of the second part, of the covenants and agreements herein contained, on his part to be fulfilled and performed, in the erection and finishing of said building, said party of the first part hereby covenants and agrees with the said party of the second part, to pay him therefor the sum of .... thousand dollars, in gold coin of the government of the United States, and in no other currency, to be paid in the manner following, viz: [here specify the various stages of the work at which the different payments shall be made, if the payments are to be made as the work progresses, or, if otherwise, then specify the times of payment].

10th. It is hereby agreed upon, between the parties hereto, that, before any payment is made under this contract, the said party of the second part shall satisfy the said architect that all the materials furnished by said party of the second part, for the construction of said building, have been paid for, and that all work of mechanics, laborers and others, hired or employed by the said party of the second part, in the construction of said building, have been fully paid, so that no lien can be filed against said building for such materials, mechanical work or labor, and that no payment shall be made without a certificate be first obtained and signed by said architect, that the said payment is due according to the terms of the contract. The payment and discharge, by the said party of the second part, of all liens for such material, work and labor, or all such claims as may be made liens on said building, are hereby declared a condition precedent to the making of any payments under this contract, by the party of the first part to the party of the second part.

In witness whereof, said parties have hereto set their hands and seals, the day and year first above written

..... [L.S.]

..... [L.S.]

Sealed and delivered in the presence of

.....

*Another Form.*

This agreement, made this .... day of .... one thousand eight hundred and ...., by and between .... of the .... of ...., of the first part, and ...., of the same place, of the second part, witnesseth, that the said party of the second part covenants and agrees to and with the said party of the first part, to make, erect and finish, in a good, substantial and workmanlike, manner, on the land of the said party of the first part, situate in the county of .... [describe the location of the lot in general terms], according to the plan and specifications hereto annexed, and of the quality of materials and workmanship set forth in said specifications. [If the materials are to be furnished by the party of the first part, say: "of such materials as the said party of the first part shall find or provide for the same."] And the said party of the second part covenants and agrees with the said party of the first part, that he will have the said building finished and completed, according to said plans and specifications, by the day .... of .... next.

And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of .... dollars, in gold coin of the government of the United States, as follows, viz: The sum of .... dollars in gold coin in .... days from this date, and the remaining sum of ...., in like gold coin, in .... days from the day of the said building being completely finished according to said plans and specifications. [If necessary, add: "and also that said party of the first part will furnish and procure the necessary materials for the said work, in such reasonable quantities and at such reasonable time or times, as the said party of the second part shall or may require."]

It shall be a condition precedent to any of the aforesaid payments, that at the time of such payment there shall be no liens on said building arising out of any claim for work and labor done for, or materials furnished by, any person whatever, to said party of the second part, in the construction of said building, or any claims existing arising from such work, labor or materials, and out of which a lien may be obtained by any person or persons on said building and premises for such work, labor or materials.

In witness whereof, said parties have hereto set their hands and seals, the day and year first above written.

..... [L.S.]

..... [L.S.]

Sealed and delivered in the presence of

.....

*Bond for the Performance of Building Contract.*

Know all men by these presents, that we, ...., ...., and ...., all of the .... of ...., are held and firmly bound unto .... of

the same place, in the sum of .... thousand dollars [or, such other sum as may cover all possible damages], lawful money of the United States, to be paid to the said ...., his executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated this .... day of ....., one thousand eight hundred and .....

The condition of the above obligation is such, that whereas the said .... did at the date hereof enter into a contract in writing with the said ...., by which the said .... agreed to erect a certain dwelling-house for the said ....., and fully fulfill and perform all the covenants, agreements and stipulations, therein contained on the part of said ....., to be so fulfilled and performed, a copy of which agreement is hereto annexed.

Now, therefore, if the above bounden ...., his executors, administrators or assigns, shall in all things stand to, abide by and well and truly keep and perform, the covenants, conditions and agreements, in the within written instrument [if the bond is indorsed on the agreement itself, or, "in the instrument of which the annexed is a copy"], contained on his part, to be kept and performed at the time and in the manner and form therein specified, then the above obligation shall be void; else to remain in full force and virtue.

..... [L.S.]

..... [L.S.]

Sealed and delivered in the presence of

..... [L.S.]

.....

*Statement of Builder made to Architect, Referee or Party, as to Liens.*

I, ...., the party of the second part, in the within agreement [or, "in the agreement annexed," or, "in the agreement of which the within is a copy"] named, having, as I claim, performed so much of said agreement as to entitle me to the first [or, "second," or, "third," as the case may be] payment in the within agreement, covenanted by the party of the first part therein to be paid to me, do declare that I do not owe, nor am I liable to any person or persons, for any work or labor done or performed for me in the said work so far as it has progressed, nor for any materials furnished to me by any person or persons whatever, in carrying on the said work, so far as it has progressed, and that I have incurred no debt whatever in the performance of said contract, which can at any time, by the laws of the state of ....., be made a lien on the building or premises in said agreement described. This statement is made to enable me to obtain the said payment, which I claim to be now due under said agreement.

Witness my hand this .... day of ....., 18..

.....

*Notice, under Section Four, by the Owner of the Land that he will not be Liable for Improvement.*

To all whom it may concern:

Take notice, that whereas I, ...., am the owner of the following described lot of land in the county of ....., viz: [here describe the land, and

if the person giving notice merely claims an interest in the land, instead of the words "am the owner of," say, "claim an interest in"; and that I have within the last three days obtained knowledge that the following construction [or, "alteration," or "repair," as the case may be] has been commenced to be made, [or, "has been made," as the case may be, or, "that it is intended or in contemplation to make the following construction, alteration or repair"], viz: [here describe it]. I hereby declare I will not be responsible for such construction ["alteration," or, "repair," as the case may be]; that the same is done without my consent, authority, license or permission, and that I will oppose any attempt to make the same a lien upon the land and premises above described.

Dated ....., .... day of ....., 18..

*Claim of Lien by Contractor.*

State of ...., county of .....

..... }  
vs.  
..... }

Notice is hereby given to all whom it may concern, that I, ....., of the county of ....., have performed work and labor, and furnished materials for the construction of the building erected and now being upon the land and premises hereinafter more particularly described as a contractor.

That it is my desire to avail myself of the benefits of the act of the legislature of the state of ....., entitled "An act for securing liens of mechanics and others," approved ....., 18..; and that it is my intention to claim a lien upon the premises aforesaid and hereinafter described, and to claim and hold such lien not only on said building or superstructure so erected, but also upon the land upon which the same is so erected, and with a convenient space around the same, or so much as may be required for the convenient use and occupation thereof, or upon such interest as ....., the person with whom I contracted, had in said premises, on the ... day of ....., 18.., when said work commenced, and when said materials were begun by me to be furnished for the construction of said building.

That the following is a true statement of my demand, for which I claim such lien, namely: On the .... day of ....., 18.., I entered into a written contract with said ....., to erect a dwelling-house on said premises, and furnish the materials therefor, according to certain plans and specifications annexed to said written agreement [or, state generally what the work was that was to be done]. That said work was commenced, and said materials begun to be furnished on the .... day of ....., 18.. That said work has been completed according to said contract, and that sixty days have not elapsed since the completion of said work or building so contracted to be by me erected, and the completion of my said contract. That the price agreed to be paid to me, by said ....., under said contract, for said work, was the sum of .... thousand dollars, (\$.....). That there is besides due to me, for extra work and extra materials, done and furnished for said superstructure, at the instance and request of said ....., the sum of .... thousand

dollars, (\$.....). The total amount for said work and materials being .... thousand dollars, (\$.....), for which I have since the entering into said contract, received, at sundry times, from the said ...., to apply on the same, the sum of .... thousand .... hundred dollars, (\$.....).

Leaving a balance now due to me on said work, from said ...., of .... thousand .... hundred dollars (\$.....); and that the said balance is justly due to me on the same, after deducting all just credits and offsets. That .... is the name of the owner of said premises before-mentioned and hereinafter particularly described, and that he was the person who employed me, with whom I entered into said contract to do said work and furnish said materials, as aforesaid. That the following is a description of the property to be charged with such lien, viz.: That piece or parcel of land situate, lying and being, in the .... of ...., and state of ...., bounded and described as follows, viz: Beginning at a point in the [insert description of premises the same as in deeds], with the said building, and all other appurtenances thereto belonging.

.....

....., .... day of ...., 18..

County of ....., ss.

....., being duly sworn, deposes and says, that he is the claimant in the above claim and notice of intention to hold a lien named; that he has read the said claim and notice by him subscribed, and knows the contents thereof, and that the same is, in all respects just and true, and that it contains a just and true statement of the demand due to him after deducting all just credits and offsets.

Sworn to before me this .... day of ...., 18..

[L.S.]

.....

Notary public.

*Claim of Lien by Material-man.*

Notice is hereby given to all whom it may concern, that I, ...., of the county of ...., have furnished materials for the construction of the building erected and now being upon the land and premises hereinafter more particularly described.

That it is my desire to avail myself of the benefits of the act of the legislature of the state of ...., entitled "An act for securing liens of mechanics and others," approved ...., 18..; and that it is my intention to claim a lien upon the premises aforesaid and hereinafter described, and to claim and hold such lien, not only on said building or superstructure so erected, but also upon the land upon which the same is erected, with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, or as ...., the owner [or, "reputed owner"] of said land and premises, had on the .... day of ...., 18.., when said materials were commenced by me to be furnished for said building or superstructure.

That ...., is the person by whom I was employed to furnish the said materials for said construction, and to whom, at his special instance and re-

quest, I did furnish the said materials, the said . . . . . being engaged as contractor, under said . . . . ., in erecting said building, and said . . . . . is the owner of said land, building and premises.

That the following is a true statement of my demand, for which I claim such lien, namely: Materials, to wit: lumber to the amount and of the value of . . . . thousand dollars, which said lumber was furnished by me to the said . . . . ., to be used, and was in fact used, in the construction of the said building. That the said . . . . . has paid to me, upon account of said lumber so furnished, the sum of . . . . hundred dollars, and that there is now due to me from said . . . . . therefor, the sum of . . . . hundred dollars, after deducting all just credits and offsets. That the said lumber was commenced by me to be furnished for said construction, on the . . . . day of . . . ., 18. . ., and was continued so to be furnished up to and including the . . . . day of . . . ., 18. . ., and that thirty days have not elapsed since the completion of said building. That the following is a description of the property to be charged with said lien, viz: [here describe property fully, and add the affidavit of verification].

*Claim of Lien by a Journeyman Carpenter.*

To all whom it may concern :

Take notice, that I, . . . . ., of the county of . . . ., have performed labor in the construction [or, "repair," or, "alteration," as the case may be] of the building and superstructure, erected and now being upon the land and premises hereinafter more particularly described, as a journeyman carpenter and joiner.

That it is my desire to avail myself of the benefits of the act of the state of . . . ., entitled "An act for securing liens of mechanics and others," approved . . . . of . . . . 18. . ., and it is my intention to claim a lien for said labor upon the premises aforesaid and hereinafter described; and that it is my intention to claim and hold such lien, not only upon the said building and superstructure, but also upon the land upon which the same are erected, together with a convenient space around the same, or so much as may be required for the convenient use and occupation thereof.

That the following is a true statement of my demand on which I found said claim for a lien, namely :

Thirty days' work on said building or superstructure, as a journeyman carpenter and joiner, commencing on the . . . . day of . . . ., 18. . ., and ending on the . . . . day of . . . ., 18. . ., and performed between said two dates, at the rate of . . . . dollars per day, payable in . . . . . of the United States; the amount of said . . . . days' work at said rate being . . . . hundred and . . . . dollars, on which I have been paid the sum of . . . . dollars, leaving due to me for said work a balance of . . . . dollars, after deducting all just credits and offsets. That the name of the owner [or, "reputed owner"] of said building or superstructure, and of the premises hereinafter described, is . . . . . That the name of the person by whom I was employed to do said carpenter and joiner work on said building is . . . . ., who was the contractor [or, "the subcontractor under the principal contractor"] employed by said . . . . . in the erection [or, "repair," or, "alteration," as the case may be] of said building and superstructure; that . . . . days have not elapsed since the comple-

tion of said building or superstructure, and said sum of .... dollars remains due and unpaid. That the following is a description of the property which I seek to charge with said lien, viz: [here insert description and then follow with affidavit of verification as before].

*Claim of Lien by Laborer on Two Contiguous Buildings, under Section Seven.*

To all whom it may concern :

Take notice, that I, ...., of the county of ....., have performed labor in the construction of the two contiguous and adjoining buildings, erected and now being upon the land and premises hereinafter more particularly described, as a hodman, in carrying bricks and mortar to said building, and attending as such on the masons and bricklayers while engaged in the erection of said building [or, whatever else the work may be].

That it is my desire to avail myself of the benefits of the act, etc., etc. [describe the intention to claim lien as in previous forms].

That the following is a true statement of my demand on which I found my said claim for a lien, namely :

I performed labor of the kind above described on said two contiguous and adjoining houses and buildings for the period of .... days, at the rate of .... dollars per day, payable in United States gold coin, making for said work, on said two buildings, the sum of .... dollars in all; that .... days of said labor, making the sum of .... dollars, was performed on the south house or building, on said premises, and .... days of said labor, making the sum of .... dollars, on the north house or building, on said premises, adjoining and contiguous to said south house. That said labor was performed between the .... day of ....., 18..., and the .... day of ....., 18.... That no part of said sum of .... dollars has been to me paid, and the said sum of .... dollars, for the work and labor aforesaid, is justly due to me, after deducting all just credits and offsets. That the name of the owner of said contiguous and adjoining houses and the premises hereinafter described, is .... That the name of the person by whom I was employed to do said labor on said buildings is ....., who was the contractor employed by said .... in the erection of said contiguous and adjoining buildings or houses; that .... days have not elapsed since the completion of said contiguous or adjoining buildings or houses, or either of them, and no part of the said sum of .... dollars has been to me paid, but the whole thereof remains justly due and unpaid as aforesaid. That the following is a correct description of the premises which I seek to charge with said lien : [here insert description, and then follow with the affidavit of verification, as in previous forms. This form can be varied so as to be adapted to any other kind of work, or for materials furnished].

*Claim of Lien by Sub-contractor.*

To all whom it may concern ;

Take notice, that I, ...., of the county of ....., have furnished certain materials and performed certain mechanical work and labor, which materials and work and labor were used in the construction, painting and finishing, of a certain building or superstructure, in the county of ....., here-

inafter more particularly described; and that the said materials and work consisted of painting materials and work and labor in painting said building or superstructure, as more particularly hereinafter mentioned.

That it is my desire to avail myself of the benefits of the act, etc., etc. [describe the intention to claim lien, as in previous forms].

That the following is a true statement of my demand on which I found said claim for a lien: On the .... day of ...., 18.., I, as a sub-contractor, entered into a contract, in writing, with one ...., who was the contractor employed by ...., the owner of said building and premises, to erect said building on said premises, by which contract so entered into between said .... and myself, I contracted with said .... to do and perform all the painting requisite and necessary to be done on said building, according to the plans and specifications specified in the contract in writing, between said .... and said ...., for the erection of said building, and furnish all the materials necessary for the same [or, whatever the contract was, setting it forth particularly, and the time the payments became due], for which the said ...., by the terms of his said contract with me, was to pay to me the sum of .... hundred dollars, in United States .... That I have fully completed my said contract, and said .... has paid me thereon the sum of .... hundred dollars, and that there remains due to me, by the terms of said contract, for said work and materials, done and furnished, under said contract, the just and full sum of .... hundred dollars, after deducting all just credits and offsets.

That .... is the owner of said building and the premises hereinafter described, and said ...., the contractor under said ...., is the person who employed me as sub-contractor, to do and perform said painting, and furnish said materials therefor, and with whom I entered into the contract aforesaid, for such painting and materials. That .... days have not elapsed since the completion of said building or superstructure, and said sum of .... hundred dollars remains due to me and unpaid. That the following is a description of the property which I seek to charge with said lien, viz: [here insert description and then follow with affidavit of verification as before].

#### *Claim of Lien by a Miner.*

..... County, ss.

To whom it may concern:

Take notice, that I, ...., of ...., in .... county, have performed labor as a miner in a certain mine, commonly called the .... mine, situate at ...., in said county, and hereinafter more particularly described.

That for my said labor, it is my desire to avail myself of the benefit, etc. [reciting the act as in the foregoing notices], and that it is my intention to claim a lien upon said mine and its appurtenances, as hereinafter described, and sufficient space around the same, or so much thereof as may be required for the convenient working, use and occupation, of said mine.

That the following is a true statement of my demand for such labor, under which I claim such lien, viz:

Thirty days' labor in said mine, as a miner in [here describe the work generally, showing it is labor performed in a mine]. That the value of said



labor [or, "the amount agreed to be paid for said labor"] is .... dollars per day, making the whole amount due for such labor ... hundred and .... dollars. That said labor commenced to be performed by me on the .... day of ...., 18.., and ended on the .... day of ...., 18.., and was done and performed within the said two dates.

That the name of the owner of said mine is the ".... mining company," a mining corporation created under the laws of this state, and the person by whom I was employed to do the said labor was ...., the superintendent of said mine, duly appointed such by said corporation, and having authority from said corporation to employ me in performing the labor aforesaid.

That no part of my said demand has been paid, and there remains due to me therefor the said sum of .... hundred and .... dollars, after deducting all just credits and offsets. That .... days have not expired since the performance by me of said labor in said mine. That the following is a description of the said mine and property on which I claim a lien as aforesaid, viz: [here describe the mine, showing the mining district in which it is located, the number of feet of ground over which the mine extends and which it includes, all which will generally be found in the deed or claim recorded in the office of the district recorder, and then close with the usual verification. This form can be changed so as to be adapted to the claim of a contractor for excavating a mine, or for repairing a mine, or for erecting an aqueduct leading to a mine, or excavating a ditch or canal leading to a mine, excavating a tunnel or other work connected with a mine. It is unnecessary to multiply forms on the subject of mines or mills. The subject itself will suggest the proper form taken in connection with the forms already given].

*Claim of Lien for Grading or Improving a Town or City Lot Under Section Nine.*

County of ....., ss.

To all whom it may concern: Take notice, that I, ...., of the county of ....., have performed labor and furnished materials in filling in and grading a certain city lot in the incorporated city of .... aforesaid, and hereinafter more particularly described.

That it is my desire to avail myself of the benefits of the act, etc., etc. [describing the act as in foregoing forms], and that to secure me payment for my said labor and materials, it is my intention to claim a lien upon the whole of said lot, more fully and particularly hereinafter described.

That the following is a true statement of my demand for such labor and materials under which I claim said lien, namely: On the .... day of ...., 18.., I entered into a contract in writing with ...., to fill in and grade said lot, and that I was by said contract, to [here describe generally what .... was to do by the terms of the contract, and what the particular improvement he was to execute, showing it was either grading, filling in or otherwise improving, the lot or the street in front of it or adjoining it]. That by said contract I was to be paid by ...., for said work, labor and materials, when the same was completed, the sum of .... thousand dollars in United States gold coin [or, "that he was to be paid so much a foot," and state what the total amount of the work is so calculated].

That I commenced the said work on the .... day of ...., 18.., and completed the same on the .... day of ...., and that .... days have not expired since the completion of the said work by me. That there is due to me for said work, labor and materials, the just and full sum of .... thousand dollars, and that said sum of .... thousand dollars is so due to me after deducting all just credits and offsets. That said .... is the owner of said city lot, and he is the person by whom I was so employed, and for whom and to whom I did said labor and furnished said materials as aforesaid. That the following is a description of the lot of land on which I made said improvement, and did such work and labor, and for which I furnished said materials, viz: [here insert description of premises, and add affidavit of verification, as in previous forms].

*Advertisement by Mechanic to Sell Personal Property Under Section Fifteen.*

#### AUCTION SALE.

Notice is hereby given that I, the undersigned, will expose for sale, at public auction, to the highest bidder, in front of the ...., in ... street, in the .... of ...., on the .... day of ...., 18.., at .... o'clock noon, of that day, a certain wagon [here describe it generally], which said wagon was, by ...., the owner thereof, left with me as a wagon-maker, to be repaired on or about the .... day of ...., 18..; that I made the necessary repairs to said wagon at the instance and request of said ....; that said repairs were justly and reasonably worth the sum of .... dollars, and were completed on the .... day of ...., 18.., when said sum so became due to me from said ...., for said repairs; that the said ...., though often requested, has not paid said sum or any part thereof, and said wagon has ever since the completion of said repairs, and for more than two months since the said work was done, been retained in my possession by virtue of my lien thereon for said repairs, and the proceeds of said sale are to be applied to the discharge of said lien and of my costs of keeping and selling said property.

.....

#### LIGHTS.

**Lights.**—The uninterrupted enjoyment of windows, called in law "lights," for the length of time sufficient to create a title to land by adverse possession, which in California is five years, raises a presumption in favor of the right. Such use or enjoyment does not bind the owner of adjoining land, so as to preclude him from building against or obstructing these lights, unless he had knowledge of their existence; and the occupation of his land by a tenant is not sufficient ground of itself for implying such knowledge.

There is one Case where the law protects the enjoyment of lights, though not ancient. Thus, where one sells a

house having doors or windows opening into a vacant lot adjoining and belonging to the vender, without reserving a right to build on such lot, or to stop the doors and windows, neither he nor his grantee of such lot can lawfully stop them. But merely intercepting the prospect without obstructing the light, or opening a window, whereby the privacy of a neighbor is disturbed, are not nuisances.

**A total Privation of light**, however, is not necessary to support an action for a nuisance; for if the plaintiff can prove that by reason of the obstruction he can not enjoy the light in so free and ample a manner as he did before, it is sufficient to maintain this action.

**How Acquired.**—As the right to light is acquired by enjoyment, so it may be lost by a discontinuance of the enjoyment, unless the party who ceases to enjoy at the same time does some act to show an intention of resuming the enjoyment within a reasonable time; and the non-user of the lights for less than five years, under such circumstances, will deprive him of his right. Thus, if he build a blank wall to his house, where the lights formerly existed, this is such an abandonment as will extinguish his title.

**When Action Lies.**—An action does not lie against a person for erecting a fence on his own land, whereby he obstructs the lights of his neighbor, let the notice be what it may, if the lights be not ancient lights, or his neighbor has not acquired a right, by grant or occupation and acquiescence. Nor does an action lie for opening a window overlooking the privacy of another; and, on the contrary, although the doing so be an encroachment, the continuance thereof for five years will ripen into a right.

## LIMITATION OF ACTIONS.

**Limitation of Actions.**—In California and Idaho, the people will not sue any person for, or in respect to, any real property, or the issue or profits thereof, by reason of the right or title of the people to the same, unless such right or title shall have accrued within ten years before any

action or other proceeding for the same shall be commenced, or unless the people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of ten years.

**Within Five Years.**—No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within five years before the commencement of such action : *provided*, however, that an action may be maintained by a party claiming such real estate, or the possession thereof, under title derived from the Spanish or Mexican governments, or the authorities thereof, if such action be commenced within five years from the time of the final confirmation of such title by the government of the United States, or its legally-constituted authorities.

**No Cause of Action**, or defense to an action, founded upon the title to real property, or to rents or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor or grantor, of such person, was seized or possessed of the premises in question, within five years before the commencement of the act, in respect to which such action is prosecuted, or defense made [or unless it appear that the title to such premises was derived from the Spanish or Mexican governments, or that the same was confirmed by the government of the United States or its authorities, within five years before the commencement of such action]. [The part in brackets applies to California alone.]

**Peaceable Entry.**—Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff in ejectment, within one year after the making such entry ; or within five years from the time when the right to bring such action accrued, [or within five years after the final confirmation by the

United States of any title derived from Spain or Mexico].  
[The part in brackets applies to California alone.]

**Adverse Possession.**—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases :

1st. Where it has been usually cultivated or improved.

2d. Where it has been protected by a substantial inclosure.

3d. Where (although not inclosed) it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or for the use of pasturage, or for the ordinary use of the occupant.

4th. Where a known lot or single farm has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Where it shall Appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

**For the Purpose of constituting an adverse possession,** by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only :

1st. Where it has been protected by a substantial inclosure.

2d. Where it has been usually cultivated or improved.

**Possession of Landlord.**—Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the pos-

this act, when the complaint has been filed in the proper court. [Same in Idaho, except the summons must be placed in the hands of the proper person for service.]

**Party out of State.**—If, when the cause of action shall accrue against a person, he is out of the state, the action may be commenced within the term herein limited after his return to the state; and if, after the cause of action shall have accrued, he depart the state, the time of his absence shall not be part of the time limited for the commencement of the action.

**When Statute not to Run.**—If a person entitled to bring an action, other than for the recovery of real property, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either :

1st. Within the age of twenty-one years.

2d. Insane.

3d. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life.

4th. A married woman.

The time of such disability shall not be a part of the time limited for the commencement of the action.

**Death of Party before Statute has Run.**—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

**New Promise.**—No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby

to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

**Contracts Made out of State.**—An action upon any contract, obligation or liability, for the payment of money, founded upon an instrument of writing executed out of this state, can only be commenced as follows :

1st. Within one year, when more than two and less than five years have elapsed since the cause of action accrued.

2d. Within six months, when more than five years have elapsed since the cause of action accrued.

**Causes of Action Accruing in other States.**—When the cause of action has arisen in another state or a territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this state.

**Actions on Judgments.**—An action upon any judgment contract, obligation or liability, for the payment of money or damages obtained, executed or made out of this state, can only be commenced within two years from the time the cause of action has accrued or shall accrue.

**Actions on Open Accounts.**—An action on an open account for goods, wares and merchandise, sold and delivered, and for any article charged in a store account, shall be commenced within two years after the cause of action shall have accrued : *provided*, that the provisions of this section shall only apply to causes of action accruing after the passage of this act.

**Actions against Officers.**—An action against any officer or *de facto* officer engaged in the collection of taxes, can only be commenced within six months :

1st. For money paid to any such officer, under protest, or seized by such officer in his official capacity as a collector of taxes, and which it is claimed ought to be refunded.

2d. To recover any goods, wares, merchandise or other property, seized by any such officer in his official capacity

as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property, so seized, or for damages for the seizure, detention, sale of or injury to, any goods, wares, merchandise or other personal property, seized as aforesaid, or for damages done to any person or property in making any such seizure, or for damages for any act, or the consequences of any act, done by any such officer in his official capacity, as aforesaid.

**Open and Current Accounts.**—In an action brought to recover the balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved on either side.

**Mining Claims, Recovery of.**—No action for the recovery of property in mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within two years before the commencement of the action. [Same in Idaho, except the action must be brought within one year.]

**Defense to Action.**—No cause of action or defense to an action, founded upon the title to property in mining claims, or to the rents or profits out of the same, shall be effectual, unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor, of such person, was seized or possessed of the premises in question within two years before the commencement of the act in respect to which such action is prosecuted, or defense made. [In Idaho, one year.]

#### OREGON.

**Within Twenty Years.**—An action for the recovery of real property and for the possession thereof, when the plaintiff was seized or possessed within twenty years before the commencement of the action.



**Within Ten Years.**—An action upon a judgment or decree of any court of the United States, or of any state or territory of the United States, and actions upon sealed instruments.

**Within Six Years.**—An action upon a contract or liability, express or implied, excepting those mentioned above ; an action for waste or trespass upon real property ; an action for taking, detaining or injuring, personal property, including an action for the specific recovery thereof ; an action for criminal conversation, or for any other injury to the person or rights of another, not hereinafter enumerated ; an action upon a liability created by statute other than a penalty or forfeiture.

**Within Three Years.**—An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by omission of an official duty, including the non-payment of money collected upon an execution. But this shall not apply to an action for an escape ; an action upon a statute, for penalty and forfeiture, where the action is given to the party aggrieved, except where the statute imposing it prescribes a different limitation.

**Within Two Years.**—An action for libel, slander, assault, battery or false imprisonment ; an action upon a statute for a forfeiture or penalty to the state.

**Within One Year.**—An action against a sheriff or other officer, for the escape of a prisoner, arrested or imprisoned on civil process. Actions to recover a balance due on mutual, open and current, accounts must be commenced within one year from the time of the last item proved in the account on either side ; but when more than one year intervenes between any items or demands, they are not to be considered such an account.

#### NEVADA.

**Within Ten Years.**—An action for the recovery of lands, or the issues or profits thereof.

**Within Five Years.**—An action upon a judgment, or decree of any court of the United States, or any state or territory of the United States.

**Within Four Years.**—An action upon a contract, obligation or liability, founded upon an instrument in writing.

**Within Three Years.**—An action upon a liability created by statute, other than a penalty or forfeiture ; an action for trespass upon real property ; an action for taking, detaining or injuring, any goods or chattels, including actions for the specific recovery of personal property ; an action for relief, on the ground of fraud, the cause of action, in such case, not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

**Within Two Years.**—An action upon a contract, obligation or liability, not founded upon an instrument of writing ; an action against a sheriff, coroner or constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution ; an action for libel, slander, assault, battery or false imprisonment ; an action upon a statute for a forfeiture or penalty to the people of this territory ; an action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process ; an action on an open account for goods, wares and merchandise, sold and delivered, and for any article charged in a store account.

## LIS PENDENS.

**Lis Pendens—Notice of Pending Suit.**—In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties to, and the object of, the action, and a description of the property in that county affected

thereby ; and the defendant may also, in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

### LOAN.

**Loan.**—A bailment without reward. A loan, in general, implies that a thing is lent without reward ; but, in some cases, a loan may be for a reward ; as, the loan of money.

**Loan for Consumption.**—A contract by which the owner of a personal chattel, called the lender, delivers it to the bailee, called the borrower, to be returned in kind. For example: If a person borrows a bushel of wheat, and, at the end of the month, returns to the lender a bushel of equal value.

**Loan for Use.**—A bailment of an article to be used by the borrower without paying for the use. It must be of something of a personal nature and gratuitous, for the use of the borrower, and must be lent to be specifically returned at the determination of the bailment. He is bound to take the greatest care of the property, and is responsible for accidents, though inevitable, which injure the property during any excess of use, and the lender may terminate the loan at pleasure.

### LODGER.

**Lodger.**—One who inhabits a part of a house of which another has the general possession and custody. It is difficult to state the distinctions between a lodger, a guest and a boarder. A person may be a guest at an inn without being a lodger. A boarder is one who regularly takes his meals with, and forms in some degree, a part of the householder's family. A lodger does not take meals in the house as a lodger, but the duration of the inhabitancy is of no importance in determining his character. See INNKEEPER.

## MAGISTRATE.

**Magistrate.**—A public civil officer, invested with some part of the legislative, executive or judicial, power given by the constitution. In a narrower sense, this term includes only inferior judicial officers, as justices of the peace.

**Statutory Provisions.**—The following statutory provisions apply to California, Idaho and Nevada :

**Magistrates, Who are.**—Justices of the supreme court, district and county judges, justices of the peace, recorders of cities, and mayors of cities upon whom are conferred, by law, the powers of justices of the peace, are magistrates. In Nevada, justices of the supreme court, judges of the district court and justices of the peace, and police judges, are magistrates. In Idaho, the justices of the supreme court, probate judges and justices of the peace, are magistrates.

**Who may Issue Warrant.**—A justice of the supreme court, a district judge or county judge, may issue his warrant of arrest to any peace officer in the state. But any other magistrate can only issue his warrant to be served without the limits of his county when his official character is certified by the county clerk of his county, or his handwriting is proved by affidavit, indorsed on or annexed to the warrant, and some magistrate of the other county shall indorse upon the warrant an order that the warrant be executed in such other county.

**Complaint under Oath.**—The warrant is issued upon the complaint of the prosecutor, under oath, and the depositions of any witnesses he may produce.

**Defendant to be Taken before Magistrate.**—Upon being arrested, the defendant must, in all cases, be taken before the proper magistrate without delay.

**Offense Committed in the Presence of Magistrate.**—If a public offense be committed in the presence of a

magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

**Arrests, and How Made.**—Arrests may also be made without a warrant by a peace officer or by a private person :

1st. For a public offense committed or attempted in his presence.

2d. When the person arrested has committed a felony, although not in his presence.

3d. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

4th. By a peace officer only, on a charge made upon a reasonable cause, of the commission of a felony by the party arrested. A peace officer may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony. The person must be informed of the cause of the arrest and the authority of the officer, except when he is in the actual commission of the offense, or is arrested on pursuit immediately after the act, or after an escape.

**Defendant to be Taken before a Magistrate.**—When a defendant is arrested for a felony he must be brought before the magistrate who issues the warrant, or in case of his absence or disability, the nearest or most accessible magistrate of the same county, except in the case when the warrant is issued in the county where the defendant is found ; upon an offense triable in another county the defendant must be taken to that county.

**Bail on Arrest for Misdemeanor.**—When arrested for a misdemeanor, however, the defendant is entitled to be admitted to bail in the county where arrested.

**Proceedings before Magistrate.**—When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a

public offense, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

**Defendant Allowed Time.**—He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel within the township or city, as the defendant may name. The officers shall, without delay and without fee, perform that duty.

**Examination of Case.**—The magistrate shall, immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

**Adjournment of Case.**—The examination must be completed at one session, unless the magistrate for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

**Bail on Adjournment.**—If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this act, as security for his appearance at the time to which the examination is adjourned.

**Commitment for Examination.**—The commitment for examination shall be by an indorsement, signed by the magistrate on the warrant of arrest to the following effect: "The within-named, ...., having been brought before me under this warrant, is committed for examination to the sheriff of the county of ....." If the sheriff be not present, the defendant may be committed to the custody of a peace officer.

**Depositions to be Read to Defendant.**—At the examination the magistrate shall in the first place read to the defendant the depositions of the witnesses examined on the

taking of the information. He shall also issue subpoenas for any witnesses required by the prosecutor or the defendant.

**Witness Examined in Presence of the Defendant.—**

The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf. [In Nevada, the following is added: If either party so desire, the examination shall be by interrogatories, direct and cross: *provided*, by consent of parties, the testimony may be reduced to writing in narrative form. The testimony so taken may be used by either party on the trial of the cause and in all proceedings therein, when the witness is sick, out of the state, dead or when his personal attendance cannot be had in court. When the testimony of each witness is all taken, the same shall be read over to the witness and corrected, as may be desired, and then subscribed by the witness, or if he refuses to sign it, the fact of such refusal, and any reasons assigned therefor, must be stated, and the same shall be attested by the magistrate; and such testimony so reduced to writing, and authenticated according to the provisions of this paragraph, shall be filed by the examining magistrate with the clerk of the district court of his county; and in case such prisoner be subsequently examined upon a writ of *habeas corpus*, such testimony shall be considered as given before such court or judge.]

**Defendant to be Informed of his Rights.—**When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him [stating to him the nature thereof], that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

**Waiver of Right to make Statement.—**If the defendant waive his right to make a statement, the magistrate shall make a note thereof immediately following the depositions

of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

**Proceeding when the Defendant makes a Statement.**—If the defendant choose to make a statement the magistrate shall proceed to take the same in writing without oath, and shall put to the defendant the following questions only : “What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.”

**Answer of Defendant to be Read to Him.**—The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

**Statement to be Reduced to Writing.**—The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form :

1st. It must set forth in detail that the defendant was informed of his rights, as above provided, and that after being so informed he made the statement.

2d. It must contain the questions put to him, and his answers thereto, as above provided.

3d. It may be signed by the defendant, or he may refuse to sign it : but if he refuse to sign it, his reason therefor must be stated as he gives it.

4th. It must be signed and certified by the magistrate.

**Witnesses of Defendant to be Examined.**—After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

**Witnesses to be Excluded.**—The witnesses produced, on the part either of the people or of the defendant, shall not be present at the examination of the defendant, and while a witness is under examination, the magistrate may exclude



all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

**Spectators May be Excluded.**—The magistrate shall also, upon the request of the defendant, exclude from the examination every person, except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel and the officer having the defendant in custody.

**Discharge of Defendant.**—After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an indorsement on the depositions and statement signed by him to the following effect: "There being no sufficient cause to believe the within-named . . . . guilty of the offense within mentioned, I order him to be discharged."

**Commitment of Defendant.**—If, however, it appear from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall in like manner indorse on the depositions and statement an order signed by him to the following effect: "It appearing to me by the within depositions [and statement, if any] that the offense therein mentioned [or, any other offense, according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within-named . . . . guilty thereof, I order that he be held to answer the same."

**Admission to Bail.**—If the offense be not bailable, the following words, or words to the same effect, shall be added to the indorsement: "And that he be committed to the sheriff of the county of . . . ."

If the Offense be bailable and bail be taken by the magistrate, the following words, or words to the same effect,

shall be added to the indorsement: "And I have admitted him to bail to answer by the recognizance hereto annexed."

**If the Offense** be bailable and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the indorsement mentioned in the third preceding paragraph: "And that he be admitted to bail, in the sum of . . . . dollars, and be committed to a sheriff of the county of . . . ., until he gives such bail."

**Commitment of Defendant and Proceedings on.**—If the magistrate order the defendant to be committed, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

**Recognizance of Witness.**—On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him, on the part of the people, a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars. [In Nevada, on holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him, a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum which may be ordered by the court.]

Whenever the magistrate shall be satisfied by proof, on oath, that there is reason to believe that any such witness will not fulfill his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet, for his appearance.

**Infants and Married Women.**—Infants and married women, who are material witnesses against the defendant,

may, in like manner, be required to procure sureties for their appearance.

**Commitment of Witness.**—If a witness, required to enter into recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

**Examination of Witness when Unable to Give Security.**—When, however, it shall satisfactorily appear, by the examination on oath of the witness or any other person, that the witness is unable to procure sureties, he may forthwith be conditionally examined on behalf of the people; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness shall thereupon be discharged. [In Nevada, when, however, it shall satisfactorily appear by the examination on oath of the witness or any other person, that the witness is unable to procure sureties, or, if either the state or the defendant shall demand that the deposition of the witness be taken, he or she may be forthwith conditionally examined on behalf of the party requiring the deposition to be taken; such examination shall be by question and answer, and shall be reduced to writing by the magistrate or under his direction, in the presence of the defendant and the counsel for the state. When the examination is completed, the deposition shall be carefully read over to the witness, and corrected in any particular desired, signed by the witness, certified by the magistrate, and transmitted to the clerk of the district court of the proper county. The witness thereupon shall be discharged: *provided*, when both parties consent thereto, the deposition may be taken in narrative form.]

**Prosecutor or Accomplice not to Give Security.**—The foregoing, regarding bail of witness, shall not apply to the prosecutor or to an accomplice in the commission of the offense charged.

**Return of Deposition.**—When a magistrate has dis-

charged a defendant, or has held him to answer, he shall return without delay to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses, taken by him.

**Security to Keep the Peace.**—If complaint under oath, in proper form, be made to a magistrate, from which it appears that there is just reason to fear the commission of an offense threatened against the person or property of another, he shall cause such person to be arrested and brought before him, and a full examination had. If it appear that there is just reason to fear the commission of the offense alleged, the party may be required to give bond not exceeding five thousand dollars, with one or more sufficient sureties, to keep the peace toward the people of the state of California [the following only applies to California], and particularly toward the complainant, which bond shall be valid for six months, and may, upon renewal of the complaint, be extended for a longer period, or a new bond may be required. If such bond be not given the magistrate shall commit the party to prison. The bond must be filed by the magistrate in the office of the clerk of the county.

**May Act on Sundays.**—The powers of a magistrate in a criminal matter may be exercised on Sundays and other non-judicial days.

#### FORMS.

##### *Complaint to obtain Surety of the Peace.*

Justice's Court.

State of .....,  
county of ..... }

Personally appeared before me, this .... day of ....., 18..., ...., who deposes and says, that on the .... day of ....., 18..., one ....., in said county, did threaten to beat, bruise and wound [or, "kill," or, "commit other offense," as the case may be], and that he has just cause to fear and does fear that the said ..... will beat, bruise and wound [or, "etc."], him, this deponent, all of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the state of .... Wherefore deponent prays that a warrant may be issued for the arrest

of said . . . . ., and that he may be brought before a magistrate, and dealt with according to law.

Sworn and subscribed before me, this . . . . . day of . . . . ., 18..

.....,

Justice of the peace.

*Peace Warrant.*

Justice's court, . . . . . township.

State of . . . . ., }  
                    county of . . . . . } ss.

The people of the state of . . . . ., to the sheriff of the county of . . . . ., or any constable, marshal or policeman, in this state : A complaint, upon oath, having been this day laid before me, by . . . . ., that . . . . . has threatened to beat, bruise and wound, the said . . . . ., you are therefore commanded forthwith to arrest the above-named . . . . ., and bring him before me, at . . . . ., or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at my office, this . . . . . day of . . . . ., A.D. 18..

.....,

Justice of the peace.

*Commitment on Peace Complaint.*

State of . . . . ., }  
                    county of . . . . . } ss.

To the sheriff of said county, greeting : Whereas, . . . . ., this day made complaint to me, in writing, on oath, that . . . . ., on the . . . . . day of . . . . . last past, threatened to, etc. [as in the complaint] : And whereas, it appearing to me, upon the examination of the said complainant, and . . . . ., and . . . . ., witnesses, duly made on oath, reduced to writing, and subscribed by them, that there was just reason to fear the commission of the said offense by the said . . . . . ; and he being brought before me on my warrant, was required to enter into recognizance in the sum of . . . . ., with sufficient surety to keep the peace toward the people of this state, and particularly toward the said complainant, for the period of six months. And the said . . . . . having refused [or, "neglected"] to find such security, you are therefore commanded, in the name of the people of the state of . . . . ., forthwith to convey him to the common jail of the said county, and to deliver him to the keeper thereof, who is hereby required to receive the said . . . . . into his custody, and him safely keep in the said jail, until he shall find such security, or be discharged by due course of law.

*Order to Discharge Prisoner on Giving Peace Bonds.*

..... county, ss.

To the sheriff of the said county, greeting : These are to command you forthwith to discharge out of your custody . . . . ., if detained by you in said common jail, for no other cause than what is specified in his warrant of commitment, made by . . . . ., justice of the peace, dated the . . . . . day of . . . . ., 18.., for not finding sureties of the peace ; he having since his said commitment, found such sureties, and duly given bond as required by law.

Witness my hand, this . . . . . day of . . . . ., 18..,

.....,

County judge.

*Peace Bond.*

State of ....., county of ....., .... court, ...., justice .... township.

Personally appeared in the justice's court, of the .... township, in and for the county of ....., ..... and ....., and acknowledge themselves and each of them justly indebted to the people of the state of ....., in the sum of .... dollars.

Sealed with their seals, and dated this the .... day of ....., A. D. 18..

The condition of the above obligation is such, that whereas the above-bounden .... has been held to keep the peace by order of ....., justice of the peace of the county of ....

Now, if the above-bounden .... shall well and truly keep the peace toward the people of the state of ....., and particularly toward ....., of said county, for the space of .... months from the date of said order, then this recognizance is to be null and void, otherwise to remain in full force and effect.

Signed and sealed the day and date above written.

..... [L.S.]

..... [L.S.]

..... [L.S.]

Witnessed and approved by me, this, the .... day of ....., 18..

.....,

Justice.

State of .....,  
county of ..... } ss.

..... and ..... being duly sworn, each for himself deposes and says, that he is a freeholder in said state of ....., and that he is worth the sum of .... dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

.....

Sworn and subscribed before me, this .... day of ....., 18..

.....,

Justice of the peace.

*Complaint of Grand Larceny.*

State of ....., county of ....., .... court, .... township.

Personally appeared before me, this .... day of ....., 18.., ...., who deposes and says, that on the .... day of ....., 18.., in said county, the crime of grand larceny was committed, to wit: by feloniously stealing, taking and carrying away, .... sovereigns, English coin, each sovereign of the value of .... dollars and .... cents, lawful money of the United States of America, and of the goods and chattels of ....., All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the state of .... And said deponent accuses .... of having committed said crime, and prays that a warrant may be issued for the arrest of said ....., and that he may be brought before a magistrate, and dealt with according to law.

Sworn and subscribed before me, this .... day of ....., 18..

.....,

Justice of the peace.

*Certificate to be Indorsed on, or Annexed to, a Warrant issued to another County, by an Inferior Magistrate.*

County of ....., ss.

I, ....., county clerk, do certify that ....., whose genuine signature is affixed to the within warrant, was, at the time of signing the same, a justice of the peace in and for the said county, duly qualified and acting as such.

Witness my hand and the seal of the .... court of said county, ...., 18..

[L.S.]

.....,

County clerk.

*Affidavit to be Indorsed or Annexed in Place of the above Certificate.*

County of ....., ss.

....., of said county, being duly sworn, says, that he is well acquainted with ...., whose name is signed to the within [or, "the annexed"] warrant, and knows his handwriting, and believes that the signature thereto is the signature and genuine handwriting of the said .....

Sworn before me, ...., 18..

.....,

Notary public of .... county.

*Indorsement on a Warrant issued by an Inferior Magistrate to a ..... Judge, to be served in another County.*

This warrant may be executed in the county of .....

....., ..... county, ....., 18..

.....,

Justice of the peace of .... county.

*Order of Discharge to be Indorsed on the Depositions and Statement after the Defendant has been Examined.*

County of ....., ss.

There being no sufficient cause to believe the within-named ..... guilty of the offense within mentioned, I order him to be discharged.

....., 18..

.....,

Justice.

*Order Holding Defendant to Answer, to be Indorsed in like Manner.*

It appearing to me by the within depositions ["and statement," if any], that the offense therein mentioned [or, any other offense, according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within-named ..... guilty thereof, I order that he be held to answer the same. [If the offense be not bailable, add: "and that he be committed to the sheriff of the county of.....;" or, if bailable, add: "and that he be admitted to bail in the sum of....., and be committed to the sheriff of the county of ..... until he gives such bail;" or, if he have given bail, add: "and I have admitted him to bail to answer by the recognizance hereto annexed."]

.....,

Justice of the peace of the county

*Commitment.*

Justice's court of the county of .....

State of .....,  
county of ..... } ss.

The people of the state of ..... to the sheriff of the county of .....

An order having been this day made by me, that .... be held to answer upon a charge of grand larceny committed in said county, on or about the .... day of ....., 18.., you are commanded to receive him into your custody, and detain him until he be legally discharged.

Dated at the county of ....., this .... day of ....., A.D. 18.

Justice of the peace of the county of .....

*Complaint for Assault and Battery.*

..... court.

State of .....,  
county of ..... } ss.

Personally appeared before me, this .... day of ....., 18.., ...., who deposes and says that, on the .... day of ....., 18.., in said county, the crime of assault and battery was committed, to wit: by then and there willfully and unlawfully assaulting and beating, bruising and wounding ...., with force and arms. All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the state of .....

And said deponent accuses .... of having committed said crime, and prays that a warrant may be issued for the arrest of said ....., and that .... may be brought before a magistrate and dealt with according to law.

Sworn and subscribed before me, this .... day of ....., A. D. 18..

*Complaint for Unlawfully Fighting.*

..... court.

State of .....,  
county of ..... } ss.

Personally appeared before me, this .... day of ..... 18.., ...., who deposes and says that, on the .... day of ....., 18.., ..... street, in said county, the crime of misdemeanor was committed, to wit: by then and there willfully and unlawfully fighting together and assaulting and beating each other, in said above-named public street, thereby violating good order, good morals and disturbing the public peace. All of which is contrary to law and against the peace and dignity of the people of the state of .....

And the said deponent accuses .... and .... of having committed said crime, and alleges that the said accused were then and there arrested, in the actual commission of said offense, and prays that they may be brought before a magistrate and dealt with according to law.

Sworn and subscribed before me, this .... day of ....., A.D. 18..



*Complaint for Violating Sunday Law.*

..... court.

State of ..... }  
 county of ..... } ss.

Personally appeared before me, this .... day of ....., 18.., ....., who deposes and says that, on the .... day of .... 18.., in said county, the crime of misdemeanor was committed, to wit: by ...., who, on the same day, the said being the first day of the week, commonly called Sunday, willfully and unlawfully kept open a certain place of business, to wit: ....., for the purpose of transacting business therein, and where, in fact, the said ..... All of which is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of ..... And said deponent accuses ..... of having committed said crime, and prays that a warrant may be issued for the arrest of said ....., and that .... may be brought before a magistrate and dealt with according to law.

Sworn and subscribed before me, this .... day of .... A.D. 18..

.....

*Complaint Generally.*

..... court.

State of ..... }  
 county of ..... } ss.

Personally appeared before me, this .... day of ....., 18.., ....., who deposes and says that, on the .... day of ....., 18.., in said county, the crime of ..... was committed, to wit: by ..... All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the state of ..... And said deponent accuses ..... of having committed said crime, and prays that a warrant may be issued for the arrest of said ....., and that ..... may be brought before a magistrate and dealt with according to law.

Sworn and subscribed before me, this .... day of ....., A.D. 18..

.....

*Complaint Carrying Concealed Weapon.*

..... court.

State of ..... }  
 county of ..... } ss.

Personally appeared before me, this .... day of ....., A.D. 18.., ....., who deposes and says that on the .... day of ....., A.D. 18.., in said county of ....., the crime of misdemeanor was committed, to wit, by ...., [real name unknown to this complainant], who then and there, not being a peace officer, provost marshal, enrolling officer or officer acting under the laws of the United States, in the department of the provost marshal of this state, or state or federal assessor, or collector of taxes or licenses, or traveler, did then and there willfully and unlawfully wear and carry concealed on his person a certain dangerous and deadly weapon, to wit: a certain ....

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the state of .... And said deponent accuses said ... of having committed said crime, and alleges and deposes that he, the said accused, was then and there arrested in the actual commission of said crime, and prays that he may be brought before a magistrate, and dealt with according to law.

Sworn and subscribed before me, this .... day of ...., A.D. 18..

*Warrant.*

..... court.

State of ..... }  
county of ..... } ss.

The people of the state of ...., to any sheriff, constable, marshal or policeman, in this state, or the county of ....: A complaint, upon oath, having been this day laid before me, ....., by ....., ....., that the crime of .... has been committed, and accusing ...., [real name unknown] thereof, you are therefore commanded forthwith to arrest the above-named ...., [if pointed out], and bring .... before me, at the ... court, or in case of my absence or inability to act, before the nearest or most accessible magistrate in the county.

Witness my hand and the seal of the court, this .... day of ...., A.D. 18..

[L.S.]

*Bench Warrant.*

..... court.

State of ..... }  
county of .... } ss.

The people of the state of ...., to any sheriff, constable, marshal or policeman, in this state:

.... having been on the .... day of ...., 18.., ....

You are therefore commanded forthwith to arrest the above-named ...., and bring .... before me.

Given under my hand, this .... day of ...., A.D. 18..

[L.S.]

*Search Warrant.*

State of ..... }  
county of ..... }

The people of the state of ...., to any sheriff, constable, marshal or policeman, in the county of ....

Proof, by affidavit, having been this day made before me, ....., ....., by ....., that the following described property has been feloniously stolen, taken and carried away, and that said property is concealed on the premises described below: You are therefore commanded, in the day time, to make immediate search on the premises for the following property: ....

And if you find the same, or any part thereof, to bring it forthwith before me, at the .... court.

Given under my hand, this .... day of .... A.D. 18..

[L.S.]

..... of the county of .....

*Return on Search Warrant.*

Served by diligent search of the within described premises, and by recovery and seizure of the following property described within, viz: ....

*Recognizance of Witnesses.*

State of ..... }  
county of ..... } ss.

Personally appeared in the ..... court, in and for the county of ...., in open court, ..... and ..... and acknowledge themselves and each of them justly indebted to the people of the state of ...., in the sum of ..... dollars.

Sealed with their seals, and dated this the .... day of .... A.D. 18..

The condition of the above obligation is such, that whereas the above bound persons have been examined as witnesses for the people in the case of ..... charged with ....., and ordered to appear and testify before the honorable the ..... court of the ..... county of ..... and state of .....

Now if the above bound persons shall well and truly be and appear in and before the honorable, the .... court, for the .... county of .... and state of ...., at the next term thereof, on the first day of the same, then and there to testify in the case and abide the order of the court, then this recognizance is to be null and void, otherwise to remain in full force and effect.

Signed and sealed the day and date above written.

..... [L.S.]  
..... [L.S.]

Approved by me, this the .... day of ....., 18..

.....,  
..... Judge.

*Appeal Bond.*

State of ..... }  
county of ..... } ss.

Whereas, by the judgment and decision of the ..... court, of said ..... county, made and entered on the .... day of ... , 18.., in the cause of the people of the state of .... vs. ...., on a charge of ....., wherein said defendant was adjudged guilty by said court, and fined .... dollars, and, in default of payment adjudged by said court to be imprisoned in the county jail of said .... county for the period of .... days, from which judgment and decision of said court defendant has appealed, in due form of law, to the .... court of said county of ....., and bail in said appeal is fixed by .... judge of said county, in the sum of .... dollars:

Now, therefore, we, ..... and ....., residents of the county of ....., hereby undertake that the above-named ....., shall well and truly prosecute his appeal, in said appellate court, and that he will pay the amount of said fine, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or said appeal be dismissed, and that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon said appeal being dismissed; or, if he

fail to perform either of these conditions, that we will pay to the people of the state of .... the sum of .... dollars.

..... [L.S.]

..... [L.S.]

Approved by me, this .... day of ... , 18..

..... Judge.

State of ..... }  
county of ..... }

....., being sworn, says he is a householder, resident of the state of .... and that he is worth the sum of .... dollars, over and above his just debts and liabilities exclusive of property exempt from execution.

Subscribed and sworn before me, this .... day of ...., 18..

..... [L.S.]

State of ..... }  
county of ..... }

....., being sworn, says he is a householder, resident of the state of ...., and that he is worth the sum of .... dollars, over and above his just debts and liabilities exclusive of property exempt from execution.

Subscribed and sworn before me, this .... day of ...., 18..,

..... [L.S.]

## MAINTENANCE.

**Maintenance.**—The support which one person, who is bound by law to do so, gives to another for his living. For example: A father is bound to find maintenance for his children; and a child is required by law to maintain his father or mother, when they cannot support themselves, and he has ability to maintain them.

**In Criminal Law.** maintenance is officious interference in a suit in which the offender has no interest, to assist one of the parties to it against the other, with money or advice to prosecute or defend the action without any authority of law.

## MALPRACTICE.

**Malpractice.**—Bad or unskillful practice in a physician or other professional person, whereby the health of the patient is injured.

**Willful Malpractice** takes place when the physician purposely administers medicines or performs an operation which he knows and expects will result in danger or death to the individual under his care, as in the case of criminal abortion.

**Negligent Malpractice** comprehends those cases where there is no criminal or dishonest object, but gross negligence of that attention which the situation of the patient requires, as if a physician should administer medicines while in a state of intoxication, from which injury would arise to his patient.

**Ignorant Malpractice** is the administration of medicines calculated to do injury, which do harm, and which a well-educated physician would know were not proper in the case.

**Remedy.**—Malpractice is a misdemeanor, and punishable by fine and imprisonment, but the injured party may have a civil action and recover damages.

### MALICIOUS PROSECUTION.

**Malicious Prosecution.**—A wanton prosecution made by a prosecutor in a criminal proceeding, or a plaintiff in a civil suit, without probable cause, by a regular process and proceeding, which the facts did not warrant, as appears by the result.

**An action lies** against a plaintiff in a civil action, who maliciously commences and prosecutes an action; but an action does not lie against his attorney who advised him to sue. For example: If a plaintiff sues and attaches before the debt is due, the prosecution of the action would be malicious.

### MANDAMUS.

**Mandamus.**—This is a high prerogative writ usually issuing out of the highest court of general jurisdiction in a state, directed to any person, corporation or inferior court of judicature, within its jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office.

**In California, Nevada and Idaho.**—It may be issued by any court, except a justice's, recorder's or mayor's, court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially en-

joins, as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

**When Issued.**—The writ shall be issued in all cases where there is not a plain, speedy and adequate, remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

**Substance of the Writ.**—The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

**Application and Notice.**—When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

**Answer, etc.**—On the return of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

**Jury Trial.**—If an answer is made, which raises a ques-

tion as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

**Penalty for Disobedience.**—When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the state or county, a certified copy of the order shall be forwarded to the controller or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer, for his willful disobedience, shall also be deemed guilty of a misdemeanor in office.

## FORMS.

*Alternative Mandamus.*

In the ..... court of the ..... county of .....

.....  
 plaintiff,  
 against  
 .....  
 defendant.

The people of the state of ..... to ..... greeting:

Whereas, it manifestly appears to us by the affidavit of ..... on the

part of the said . . . . ., the plaintiff, and the party beneficially interested herein, that . . . . ., and that there is not a plain, speedy and adequate, remedy in the ordinary course of law.

Therefore, we do command you, that immediately after the receipt of this writ, you do . . . . ., or that you show cause before this court, at the court-room thereof, in the . . . . ., in the county of . . . . ., on the . . . . day of . . . ., A.D. 18.., at the opening of the court on that day, why you have not done so.

Witness, the honorable . . . . ., judge of our . . . . . court of the . . . . ., at the . . . . . in the county of . . . . ., and the seal of said court, this . . . . day of . . . ., A.D. 18..

. . . . ., Clerk,  
By . . . . .,  
Deputy clerk.

*Peremptory Mandamus.*

. . . . ., }  
                  plaintiff,  
          *against*  
. . . . ., }  
                  defendant.

The people of the state of . . . . . to . . . . ., greeting :

Whereas, it manifestly appears to us by the affidavit of . . . . ., on the part of the said . . . . ., the plaintiff, and the party beneficially interested herein, that . . . . ., and that there is not a plain, speedy and adequate, remedy in the ordinary course of law.

Therefore, we do command you, that immediately after the receipt of this writ, you do . . . . .

Witness, the honorable . . . . ., judge of our . . . . . court, of the . . . . ., at the . . . . ., in the county of . . . . ., and the seal of said court, this . . . . day of . . . ., A.D. 18..

. . . . ., Clerk,  
By . . . . .,  
Deputy clerk.

MANIFEST.

**Manifest.**—A written instrument containing a true account of the cargo of a ship or vessel. The want of a manifest, where one is required, and also making a false manifest, are grave offenses.

MARITAL.

**Marital.**—That which relates to marriage; as, -marital rights, etc. See HUSBAND AND WIFE.

MARK.

**Mark.**—A sign traced on paper which stands in place of



a signature, usually made by persons who cannot write. It is usually a cross, made in a little space left between the christian name and surname. When witnessed by a person who writes his name as a witness, it has the same effect as writing.

### MATERIAL-MEN.

**Material-men.**—Persons who furnish materials to be used in the construction of ships or houses.

By **Maritime Law**, material-men have a lien on a foreign ship for supplies or materials furnished for such ship, which may be recovered in the marine courts, but no such lien exists on domestic ships. See **LIENS**.

### MEASURE OF DAMAGES.

**Measure of Damages.**—A rule or method by which the damage sustained is to be estimated or measured.

**The Defendant** is to make compensation for all the natural and proximate consequences of his wrong, but not for secondary or remote consequences.

**There are Cases** in which this principle of compensation is departed from : as, when exemplary damages are awarded, or double or treble damages are allowed by statute. In general, the law seeks to give compensation. The measure of this compensation has been, in the case of protest for non-payment of bills of exchange, definitely fixed by statute in many of the states.

**The rate of Damages**, to be paid to the holder of a bill of exchange which has been dishonored as fixed by statute, is as follows :

**Alabama.**—On inland bills, ten per cent., and on foreign bills, fifteen per cent., on the sum drawn for. These damages are in lieu of all charges, except costs of protests incurred previous to and at the time of giving notice of non-payment ; but the holder may recover legal interest on the amount of the bill and damages, from the time at which payment was demanded and costs of protest. The same

damages are allowed on protest for non-acceptance ; but interest is recoverable on the amount of the bill only.

**Arkansas.**—If the bill has been drawn on any person at any place within the state, at the rate of two per cent. on the principal sum specified in the bill. If it be drawn on any person and payable in *Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois*, or *Missouri* or at any point on the Ohio river, at the rate of four per cent. on the principal sum. If the bill has been drawn on any person, and payable at any other place within the United States, at the rate of five per cent. on the principal sum. If drawn on any person, and payable at any port or place beyond the United States, at the rate of ten per cent. on the sum specified in the bill.

**California.**—See **BILLS AND NOTES.**

**Connecticut.**—When drawn on another place in the United States. When drawn upon persons in the city of *New York*, two per cent. When in other parts of the state of *New York*, on the New England States [other than this], *New Jersey, Pennsylvania, Delaware, Maryland, Virginia* or the *District of Columbia*, three per cent. When on persons in *North* or *South Carolina* or *Ohio*, five per cent. On other states, territories or districts, in the United States, eight per cent. on the principal sum in each case, with interest on the amount of such sum, with the damage after notice and demand. When drawn on persons residing in *Connecticut*, no damages are allowed.

**Delaware.**—The damages on bills drawn on any person beyond seas, and returned unpaid with legal protest, are, as to all concerned, twenty per cent. on the contents of the bill.

**Florida.**—Damages on foreign protested bills are at the rate of five per cent.

**Georgia.**—No damages are allowed on protested bills drawn in the state on a person in the state, except that on bank bills, ten per cent. damages are allowed for refusal to pay in specie. On bills drawn or negotiated within the

state on persons out of the state, but within the United States, five per cent., and interest is allowed. On bills drawn on a person out of the United States, ten per cent damages and postage, protest and necessary expenses; also the premium, if any, on the bill; but if a discount, the discount must be deducted.

**Idaho.**—See **BILLS AND NOTES**.

**Illinois.**—On foreign bills protested for non-acceptance or non-payment, legal interest on the bill from the time it ought to be paid, with ten per cent. damages in addition and charges of protest. On bills payable within the United States or their territories, but out of the state, the same rule applies, except that the damages are only five per cent.

**Indiana.**—No damages are allowed on a bill drawn within the state on a person within the state. On a bill drawn for value on a person in another state, territory or district, five per cent. damages are recoverable; and if on a person out of the United States, ten per cent. No interest or charges prior to protest are allowed; but interest from date of protest may be recovered. No damages are recoverable of drawer or indorser beyond cost of protest, if the principal sum is paid on notice of protest and demand.

**Iowa.**—On bills drawn on a person out of the United States, or in *California, Oregon, Utah or New Mexico*, ten per cent. damages, with interest from date of protest, are allowed. If drawn on a person in *Iowa, Missouri, Illinois, Wisconsin or Minnesota*, three per cent, with interest. If drawn on a person in *Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Indiana, Ohio, Virginia, the District of Columbia, Pennsylvania, Maryland, New Jersey, New York, Massachusetts, Rhode Island or Connecticut*, five per cent. and interest.

**Kentucky.**—On bills drawn on a person at any place within the United States, no damages are allowed. Bills drawn on a person out of the United States, and protested for non-acceptance or non-payment, bear interest at the rate of ten per cent. per year from the date of protest for no

longer than eighteen months, unless payment be sooner demanded from the party to be charged. Such interest is then recoverable up to the time of judgment; and the judgment bears legal interest. No other damages are allowed.

**Louisiana.**—On protest for non-acceptance, or for non-payment of bills drawn on foreign countries, ten per cent. is allowed; on bills drawn in other states of the United States, five per cent. These damages are in lieu of interest and all other charges incurred previous to time of giving notice of non-payment; but the principal and damages bear interest thereafter.

**Maine.**—Damages are allowed as follows, in addition to interest: On bills for one hundred dollars or more, drawn, accepted or indorsed, in the state, at a place seventy-five miles distant from the place where drawn, one per cent.; on bills for any sum drawn, accepted or indorsed, in the state, if payable in *New York*, or in any state north of it, except *Maine*, three per cent.; if payable in any Atlantic state south of *New York* and north of *Florida*, six per cent.; if payable in any other state, nine per cent.

**Maryland.**—No damages are allowed when the bill is drawn in the state on another person in Maryland. When it is drawn on any person in any other of the United States, eight per cent. damages on the amount of the bill are allowed, and an amount to purchase another bill at the current exchange, and the interest and losses of protest. If the bill be drawn on a foreign country, fifteen per cent. damages are allowed, and the expense of purchasing a new bill, as above, besides interest and costs of protest.

**Massachusetts.**—When a bill drawn or indorsed within the state, and payable without the limits of the United States [excepting places in *Africa*, beyond the *Cape of Good Hope*, and places in *Asia*, and the islands thereof], is protested for non-acceptance or non-payment, the party liable on such bill shall pay the same at the current rate of exchange at the time of the demand, and five per cent. damages, with interest, from date of protest, in full of all damages, charges and expenses.

**When the Bill** is payable at a place in *Africa*, beyond the *Cape of Good Hope*, or at any place in *Asia* or the islands thereof, the party liable shall pay the same at the par value, with twenty per cent. in full of all damages, interest and charges.

**When the Bill** is drawn payable without the state, but within the United States, damages are as follows: If payable in *Maine*, *New Hampshire*, *Vermont*, *Rhode Island*, *Connecticut* or *New York*, two per cent.; if in *New Jersey*, *Pennsylvania*, *Maryland* or *Delaware*, three per cent.; if in *Virginia*, *North Carolina*, *South Carolina*, *Georgia* or the *District of Columbia*, four per cent.; if in any other of the states or territories of the United States, five per cent.

**When the Bill** is payable within the state, if it is for less than one hundred dollars, and is payable at a place not less than seventy-five miles distant from the place where it is drawn or indorsed, two per cent. damages are payable.

**Michigan.**—When a bill is drawn in the state on a person in the state, no damages are allowed.

**When Drawn** or indorsed within the state, and payable out of it, within the United States, if payable within the states of *Wisconsin*, *Illinois*, *Indiana*, *Pennsylvania*, *Ohio* or *New York*, three per cent. interest on the contents of the bill, and charges, are allowed; if payable within the states of *Missouri*, *Kentucky*, *Maine*, *New Hampshire*, *Vermont*, *Massachusetts*, *Rhode Island*, *Connecticut*, *New Jersey*, *Delaware*, *Maryland*, *Virginia* or the *District of Columbia*, five per cent.; if payable elsewhere in the United States, out of *Michigan*, ten per cent.

**Minnesota.**—When a bill payable out of the United States is protested for non-acceptance or non-payment, the party liable shall pay the bill at the current rate of exchange and ten per cent. damages, with interest from date of protest, in full of all damages, charges and expenses.

**When the Bill** is drawn on a person out of *Minnesota*, but within the United States, the party shall pay the bill, with

interest, and five per cent. damages, together with costs and charges of protest.

**Mississippi.**—Bills drawn on a person out of the state, but within the United States, draw five per cent. damages, and interest on the principal; bills payable out of the United States, ten per cent., besides interest. In all cases the holder is entitled to all costs and charges. No damages are allowed on domestic bills.

**Missouri.**—On bills drawn on a person within the state, the damages are four per cent.; when on a person in another state or territory of the United States, ten per cent.; when on a person out of the United States, twenty per cent.

**Nevada.**—See **BILLS AND NOTES.**

**New York.**—Upon bills drawn or negotiated within the state upon any person at any place within the six states east of *New York* or in *New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia* or the *District of Columbia*, the damages are three per cent. If drawn upon a person at a place within *North or South Carolina, Georgia, Kentucky or Tennessee*, five per cent. If upon any person in any other state or territory of the United States, or at any other place on or adjacent to this continent, and north of the equator, or in any British or foreign possessions in the *West Indies* or elsewhere in the western Atlantic Ocean or in Europe, ten per cent. These damages are in lieu of interest, charges of protest and all other charges, incurred previous to, and at the time of, giving notice of non-acceptance or non-payment. But the holder is entitled to interest upon the aggregate amount of the principal sum and damages from time of notice of the protest. If the contents of the bill are expressed in the money of the United States, the amount due and the damages for non-payment are to be ascertained and determined without reference to the rate of exchange existing between *New York* and the place on which the bill is drawn. If in the currency of any foreign country, then the amount due, exclusive of the damages,

is to be ascertained by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

**These Damages** are only recoverable by a holder who has purchased the bill or some interest therein for a valuable consideration.

**North Carolina.**—On bills drawn on a person in any other state or territory of the United States, three per cent. damages are allowed; if drawn on any other place in *North America*, except the *northwest coast* or on any of the *West India* or *Bahama Islands*, ten per cent.; if on the *Island of Madeira*, the *Canary Islands*, the *Azores*, the *Cape Verde Islands*, or in any other place or state in *Europe* or in *South America*, fifteen per cent.; if on any other part of the world, twenty per cent. In all cases interest is recoverable from maturity of the bill.

**Ohio.**—No damages are allowed on bills drawn on any person within the state.

**Oregon.**—See **BILLS AND NOTES.**

**Pennsylvania.**—The following damages are allowed on protest of a bill of exchange for non-payment. They are in lieu of interest and all other charges, except charges of protest, to the time when notice of protest is given and demand of payment made, but are in addition to the charges of protest and interest on the amount of principal, damages and charges from the time of such notice and demand. If the bill is drawn on a person in any place in the United States or the territories, except *California* [Upper or Lower], *New Mexico* and *Oregon*, five per cent.; if upon any place on the west coast of *South America*, fifteen per cent.; if upon any place in *China*, *India*, or other parts of *Asia* or *Africa*, or islands in the Pacific Ocean, twenty per cent.; if upon any other part of the world [including *California*, *New Mexico* and *Oregon*, above excepted], ten per cent.

**The Amount** of the bill and damages are ascertained by the rate of exchange or value of the currency mentioned in

the bill at the time of notice of protest and demand of payment.

**Rhode Island.**—On foreign bills drawn or indorsed within the state, and returned from any place without the United States, protested for non-acceptance or non-payment, the damages are ten per cent. and charges of protest, and the bill carries interest at six per cent. from the date of protest. The same rule applies to inland bills, except that the damages are five per cent. only.

**South Carolina.**—This state does not appear to have any statute on the subject. The courts hold that whatever sum is paid as discount is recoverable, if it does not exceed the current rate of exchange; and on protest of bills, foreign or domestic, ten per cent. damages is allowed.

**Tennessee.**—On bills payable out of the state and protested for non-payment, damages in addition to interest and charges of protest are recoverable as follows: If the bill was drawn on a person in any of the states [except *Tennessee*] or territories of the United States, three per cent.; if on any other state or place in *North America*, bordering upon the *Gulf of Mexico*, or in any of the *West India Islands*, fifteen per cent.; if on any other part of the world, twenty per cent.

**Texas.**—The holder of any protested draft or bill of exchange drawn within the state, and payable beyond the limits of it, may recover ten per cent. as damages, with interest and costs of suit. This does not embrace drafts drawn by persons other than merchants upon their agents or factors.

**Virginia.**—When a bill of exchange drawn or indorsed within this state is protested for non-acceptance or non-payment, there shall be paid by the party liable for the principal of such bill, in addition to what else he is liable for, damages upon the principal at the rate of three per cent., if the bill be payable out of *Virginia*, and within the United States; at the rate of ten per cent. if the bill be payable without the United States.



**Wisconsin.**—On bills drawn payable without the United States, damages are allowed at the rate of five per cent., with interest on the contents of the bill from the date of protest. These damages and interest are in full of all damages, charges and expenses. On bills drawn payable out of the state, and in any state or territory of the United States adjoining the state, damages at the rate of five per cent. are allowed, with interest on the bill according to its tenor, and costs and charges of protest. On bills drawn payable out of the state, but within some state or territory of the United States not adjoining the state, the damages are ten per cent.; with interest and charges as last mentioned.

### MENACE.

**Menace.**—A threat; a declaration of an intention to cause evil to happen to another.

When **Menaces** to do an injury to another have been made, the party making them may, in general, be held to bail to keep the peace; and, when followed by any inconvenience or loss, the injured party has a civil action against the wrong-doer. See **MAGISTRATE**.

### MERGER.

**Merger.**—The absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased.

When a **Man** commits a great crime, which includes a lesser, the latter is merged in the former.

**Murder**, when committed by blows, necessarily includes an assault and battery; a battery, an assault; a burglary, when accompanied with a felonious taking of personal property, a larceny. In all these and similar cases, the lesser crime is merged in the greater. Where one offense is of the same character with the other, there is no merger; as, in the case of a conspiracy to commit a misdemeanor and the subsequent commission of the misdemeanor in pursu-

ance of the conspiracy, the two crimes being of equal degree, there can be no merger.

**Rights** are said to be merged when the same person who is bound to pay is also entitled to receive.

### MERITS.

**Merits.**—A defense upon the merits is one that rests upon the justice of the case, and not upon technical grounds only. The statute of limitation, as a defense to a cause of action, is technical, and not a defense on the merits. A denial of the cause of action, or the plea of accord and satisfaction and the like, is a defense on the merits.

### MIDDLEMAN.

**Middleman.**—One who has been employed as an agent by a principal, and who has employed a sub-agent under him, by the authority of the principal, either express or implied. He is not, in general, liable for the wrongful acts of the sub-agent, the principal being alone responsible. If goods be delivered from a ship by the seller to the wharfinger, to be by him forwarded to the purchaser, who has been appointed by the latter to receive them, or, if goods be sent to a packer for or by order of the vendee, the wharfinger and packer are middlemen.

### MINING.

**Mining.**—The United States is the owner of all mineral lands, and consequently of all minerals therein, except where the land containing them has passed by grant or sale to private persons. The occupants of mines on the public domain hold against every person except the United States, and at the will of the United States. This is the extent of all titles to mineral lands, except where they are covered by a grant or sale by the United States or the Republic of Mexico. See MINERAL LAWS OF THE UNITED STATES.

**Possession of.**—Mining claims are held by possession regulated and defined by usage and local rules. When such possession is defined by physical marks, accompanied with actual occupancy of a part of the claim, it is sufficient to enable the possessor to maintain ejectment for the entire claim, although such acts of appropriation are not done in accordance with any local mining rule.

Going on the Land to work it, or even work done in proximity and in direct relation to the claim, for the purpose of extracting or preparing to extract minerals from it—as, for example, starting a tunnel a considerable distance off, to run into the claim—would be a possession of the claim within the meaning of the rule. The possession of a mining claim by a company composed of several persons, is the possession of each one of its members.

#### CALIFORNIA.

*An Act Prescribing the mode of Maintaining and Defending Possessory Actions on Public Lands in this State.*

[Approved April 20th, 1852; Stat. 1852.]

Section 1. Any person now occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands in this state, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with or injuries done to his or her possessions of said land against any person or persons so interfering with or injuring such land or possession: *provided*, that if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid, shall not preclude the working of such mines by any person or persons desiring so to do, as fully and unre-servedly as they might or could do had no possession or claim been made for grazing or agricultural purposes.

*An Act to protect Owners of Growing Crops, Buildings, and other Improvements in the Mining Districts of this State.*

[Passed April 25th, 1865; Stat. 1865, 145.]

Section 1. No person shall, for mining purposes, destroy

or injure any growing crops of grain or garden vegetables growing upon the mineral lands of this state, nor undermine or injure any house, building, improvement or fruit trees, standing upon mineral lands and the property of another, except as hereinafter provided.

Sec. 2. Whenever any person, for mining purposes, shall desire to occupy or use any mineral lands of this state, then occupied by such growing crops of grain, garden vegetables, fruit trees, houses, buildings, or other improvements, property of another, such person shall first give bond to the owner of the growing crop, building, fruit trees or other improvements, to be approved by a justice of the peace of the township, with two or more sufficient sureties, in a sum to be fixed by three disinterested citizens, householders of the township, one to be selected by the obligor, one by the obligee, and one by a justice of the peace of the township, conditional that the obligor shall pay to the obligee any and all damages which said obligee may sustain in consequence of the destruction by the obligor or those in his employ, of the growing crops, fruit trees, improvements or buildings, of the obligee: *provided*, that the word "improvements" in this act shall be construed to mean any superstructure on said farm, ranch or garden, and nothing more.

Sec. 3. If any person or persons shall violate the provisions of the first and second sections of this act, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined in a sum not exceeding two hundred dollars, nor less than fifty dollars, or by imprisonment in the county jail of said county, not exceeding three months, either or both, at the discretion of the court: *provided*, nothing in this act shall prevent miners from working any mineral lands in the state, after the growing crops on the same are harvested.

*An Act to provide for the Conveyance of Mining Claims.*

[Passed April 13th, 1860; Stat. 1860, 175.]

Section 1. Conveyances of mining claims may be evidenced by bills of sale or instruments in writing not under

seal, signed by the person from whom the estate or interest is intended to pass, in the presence of one or more attesting witnesses, and also all conveyances of mining claims heretofore made by bills of sale or instruments of writing, not under seal, shall have the same force and effect as *prima facie* evidence of sale, as if such conveyances had been made by deed under seal: *provided*, that nothing in this act shall be construed to interfere with or repeal any lawful local rules, regulations or customs, of the mines in the several mining districts of this state; and *provided*, further, every such bill of sale or instrument in writing shall be deemed and held to be fraudulent and void as against all persons except the parties thereto, unless such bill of sale or instrument in writing be accompanied by an immediate delivery to the purchaser of the possession of the mining claim or claims therein described, and be followed by an actual and continued change of the possession thereof, or unless such bill of sale or instrument in writing shall be acknowledged and recorded as required by law in the case of conveyances of real estate.

*An Act supplementary to the Act entitled "An Act to amend an Act defining the Time for commencing Civil Actions," passed April 22d, 1850, approved April 18th, 1863.*

[Approved February 18th, 1864; Stat. 1863-4, 91.]

Section 1. No action for the recovery of property in mining claims, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within two years before the commencement of the action.

Sec. 2. No cause of action or defense to an action founded upon the title to property in mining claims, or to the rents or profits out of the same, shall be effectual unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor, of such person was seized or possessed of the premises in question within two years before the commencement of the act

in respect to which such action is prosecuted or defense made.

Sec. 3. This act shall take effect from and after its passage.

*An Act amendatory and supplementary to the Act entitled "An Act to Regulate Proceedings in Civil Cases in Courts of Justice of this State."*

[Passed May 15th, 1834; Stat. 1854, 72; Stat. 1855, 199.]

Sec. 63. In actions respecting miners' claims in a justice's court, the justice shall have power, upon application of the party out of possession of the claim or claims, after notice of one day to the adverse party, to appoint a receiver of the proceeds of the claim pending the action. If the parties agree upon a person, he shall be appointed such receiver; if the parties do not agree, the justice shall appoint a receiver, who shall take an oath, which shall be filed with the justice, that he is not interested in the action between the parties, and that he will honestly keep an account of all gold dust or metals of any kind, the proceeds of the claim or claims in dispute. After the appointment of such receiver, the justice shall have power to issue a written order to any sheriff or constable to put such receiver into possession of such claim, which order said sheriff or constable shall execute, and the receiver shall remain in possession of such claim or claims so long as said action may remain undetermined in any court. The court in which the action may be pending shall have authority, upon the application of either party, with two days' notice to the other, from time to time to make such orders for the disposition of the proceeds of such claim or claims, for the safety of the same, as may seem proper. The court in which the action may be pending shall also have power, upon application of the receiver, based upon his affidavit, to punish, as for contempt, all persons who have been guilty of disturbing the receiver in the possession of the claims.

Sec. 64. The receiver mentioned in the last section shall keep an accurate account of all the proceeds of the claim pending action, and of all amounts paid out for

working the same, and shall retain the proceeds and pay the same over pursuant to the order of the court. The receiver shall also be required, on demand of either party, to give security for the faithful performance of his trust, and shall be allowed for the same a reasonable compensation, to be paid out of the proceeds of the claim in his hands, but in no case exceeding ten per cent. upon such proceeds.

*An Act to Regulate Proceedings in Civil Cases in the Courts of Justice of this State.*

Sec. 621. \* \* \* \* In actions respecting mining claims, proofs shall be admitted of the customs, usages or regulations, established and in force at the bar or diggings embracing such claim, and such customs, usages or regulations, when not in conflict with the constitution and laws of this state, shall govern the decision of the action.

*An Act to provide Revenue for the Support of the Government of this State.*

[Approved May 17th, 1861 ; Stat. 1861, 447.]

Sec. 90. No person, unless he is a citizen of the United States, or shall have declared his intention to become such (California Indians excepted), shall be allowed to take or extract gold, silver or other metals, from the mines of this state or hold a mining claim therein, unless he shall have a license therefor as hereinafter provided.

Sec. 92. \* \* The amount to be paid for such licenses shall be at the rate of four dollars per month ; and said licenses shall in no case be transferred. \* \*

Sec. 93. The collector shall collect the foreign miners' license tax provided for in this act, from all persons liable to pay the same, and may seize the property of any such person refusing to pay such tax, and sell the same at public auction on one hour's notice, by proclamation, and shall deliver the property to the purchaser, together with a bill of sale, with the license attached, which shall transfer the title thereof to the person paying the highest price therefor, and after deducting the tax and necessary expenses incurred by reason of such refusal and sale of property,

the collector shall return the surplus of the proceeds of the sale, if any, to the person or persons whose property was sold : *provided*, that should any person, liable to pay such tax in any county of this state, escape into any other county with intention to evade the payment of such tax, then, and in that event, it shall be lawful for the collector to pursue such person and enforce the payment of such tax in the same manner as if no such escape had been made. Any foreigner representing himself to be a citizen of the United States shall, in the absence of his certificate to that effect, satisfy the collector of the correctness of his statement, by affidavit or otherwise, and for that purpose the collector is empowered to administer such oath or affirmation. All foreigners not eligible to become citizens of the United States, residing in any mining district of this state, shall be considered miners under the provisions of this act.\* Every subsequent license, after the first, when issued to the same person, shall be dated from the expiration of the former license.

Sec. 97. Any person or company hiring foreigners, or interested with them as partners, or renting, or on shares, or in any manner connected with any foreigner or foreigners in working, or in possession of, any mining ground in this state, shall be held liable for the amount of license of each and every foreigner with whom such person or company is so connected or interested. All mining ground worked or possessed, all improvements, all tools and machinery used in working such ground by said person or company, shall be subject to sale for the payment of said license tax in the manner provided in section ninety-three of this act. The collector shall have power to require any person or company believed to be indebted to, or to have money, gold dust or property of any kind belonging to, any foreigner, or in which any foreigner is interested, in his or their possession, or under his or their control, to answer under oath as to such indebtedness, or the possession of such money, gold dust or other property. In case a party

\* Held to be unconstitutional by California supreme court.



is indebted, or has possession or control of any moneys, gold dust or other property, as aforesaid, of such foreigner or foreigners, he may collect from such party the amount of such license, and may require the delivery of such money, gold dust, or other property as aforesaid, and in all cases the receipt of the collector to said party shall be a complete bar to any demand made against said party or his legal representative, for the amounts of money, gold dust or property embraced therein; and *provided*, that whenever, from any cause whatever, the collector shall be unable to collect the foreign miners' license from any person liable to pay the same, he shall certify to the road overseer of the district the name or description of the person and the amount due, and such person shall, upon the requisition of the overseer, work upon the public roads of the district a sufficient number of days to exhaust said sum by crediting against it one dollar for each day's work; and every person so liable to work, and refusing so to do, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than five and not more than thirty days.

Sec. 98. Any person or company hiring foreigners to work in the mines of this state shall be liable for the amount of the license for each person so employed.\*

*An Act concerning Partnerships for Mining Purposes.*

[Approved April 2d, 1866.]

Section 1. Whenever two or more persons, being owners, occupants or locators, of any mining claim, or when any two or more persons shall have associated themselves together, with or without any written agreement [but not as a body corporate], for the purpose of working or prospecting any mining claim, or any public lands of the United States, shall, after being notified, in writing, by any member of said mining company, that they have been associated in said mining claim, be deemed to be copartners

\*The act of March 16th, 1868 (Stat. page 173), grants the revenue derived from foreign miners to counties where the same is collected.

for the purpose of prospecting or working said mining claim, and shall be subject to the provisions and liabilities imposed by this act.

Sec. 2. After a mining claim shall have been located, any person who shall have been a member of the company, desiring to work said claim, may notify the other members of the company of his or their desire to have an assessment levied against the owners of said claim, for the purpose of prospecting, working or developing, such claim, designating a time and place for a meeting of the members of such company, for the purpose of levying an assessment. Such notice shall be given as provided in the fourth section of this act, and, if a majority of the shares in such mining claim be represented at such meeting, then a majority of those present at such meeting shall be authorized to levy such assessment; but, if a majority of the shares in such company be not represented at such meeting, then a majority of those present shall be authorized to cause the said mining claim to be prospected or worked, and thereafter the owners in such mining claim shall be liable for their respective proportion of the expenses so incurred in prospecting, working or developing, such claim, to the extent of the value of their interest in such claim; and thereafter assessments may be levied from time to time, not oftener than once in thirty days, by any member not delinquent of said mining company, against delinquent members, for the collection of sufficient amount of assessments to pay for the working and prospecting of such claim up to the time such assessment is made; and such delinquent assessment may be collected as in this act provided: *provided*, that when the mining companies have by-laws designating what amount of work shall be done in such claim, then any assessment made as provided in this act shall not exceed an amount sufficient to pay for the work required by the by-laws; and *provided*, further, that no new assessment shall be made until all previous assessments have been paid, or the remedies for the collection thereof shall have been exhausted.

Sec. 3. Any member of a mining company, or his heirs, executors, administrators or assigns, in any mining claim, who shall neglect or refuse to pay any assessments, or shall neglect to perform any labor or other liability which shall become due from him under this act, may, after the expiration of thirty days after such assessment, labor or other liability, has become due, be notified, in writing, by any remaining member or members, or by his or their agent, that such assessment, labor or other liability, is due, which written notice shall specify the name of such mine and the district wherein it is located, and shall particularly mention the liability which has been incurred.

Sec. 4. Such notice and all other notices required under this act shall be served as follows :

1st. If the party reside in the county where the mine is located, it shall be delivered to him personally or left at his place of residence.

2d. If the party reside out of the county, but within the state, and his place of residence is known, such notice shall be deposited in a post office or express office, in a sealed envelope, with postage or express charges, as the case may be, prepaid, addressed to such party at his place of residence.

3d. If such party reside out of the state, or his place of residence is unknown, such notice shall be published once a week for eight successive weeks, in some newspaper published in the county where the mine is located, if there be such paper, otherwise in some newspaper published in an adjoining county.

Sec. 5. If the person so notified shall neglect or refuse to pay or discharge such assessment, work or liability, for ten days after personal service or leaving notices at his residence, when such service has been had or notice so left, or for twenty days after deposit in post or express office of such notice, when such deposit has been made, or until the full period of publication herein provided, when publication is made, thereafter such delinquent shall be deemed to have absolutely forfeited and abandoned to the other members of said mining company all the right, title,

claim and interest, owned, held or possessed, by such delinquent in the said mining claim, such portions thereof as shall be sufficient to satisfy such delinquency; the remaining member or members may sell the interest of such delinquent member in and to such mining claim, or so much of said interest as may be required to pay such assessment or liability, together with costs of sale.

Sec. 6. All sales under the provisions of this act shall be at public auction at the mining claim, and shall be made by a constable of the township, auctioneer or sheriff, of the county, and by giving ten days' notice thereof, by posting written notices in three public places within the mining district where such mine is located. The notice shall also specify the extent of the interest of the delinquent, and the amount of the delinquency, and the name of such delinquent member or members, at the time and place of such sale, which place shall be within the district where the mine is located, and shall commence by offering the smallest number of feet or shares in such claim for sale, and continue selling at the same time and place until a sufficient number of feet or shares are sold to pay the delinquent assessment or liabilities; and the officer selling shall execute a deed to the purchaser or purchasers, and such deed shall be received in all courts as *prima facie* evidence of the lawful authority of the officer selling, and of the regularity of all proceedings prior to the execution of the deed, and as *prima facie* evidence that all the right, title and interest, of the party delinquent has been lawfully and rightfully sold and conveyed to the purchaser; and the purchaser's title to such mining claim shall be absolute.

Sec. 7. The provisions of this act shall also apply to all persons who have refused or neglected to sign articles of incorporation or a deed of trust in any incorporated mining company.

Sec. 8. An act entitled an act concerning partnerships for mining purposes, approved April 4th, 1864, is hereby repealed.

## OREGON.

**Location of Claim on Quartz Lead.**—Any person or company establishing a claim on any quartz lead containing gold, silver, copper, tin or lead, or a claim on any vein of cinnabar, for the purpose of mining the same, shall be allowed to hold the land or vein with all its dips, spurs and angles, for the distance of three hundred feet in length and seventy-five feet in width on each side of such lead or vein.

**Claim, How Established.**—To establish a solid claim, the discoverer or person wishing to establish a claim, shall post a notice on the lead or vein, with the name or names attached, which shall protect the claim or claims for thirty days; and before the expiration of said thirty days the claim shall be recorded, and describing, as near as may be, the claim or claims and their location; but continuous working of such claim shall obviate the necessity of such record. If any claim shall not be worked for twelve consecutive months, it shall be forfeited, and considered liable to location by any person, unless the owner be absent on account of sickness or in the service of their country in time of war.

**Plurality of Claims, when Allowed.**—One claim may be held by location upon each vein, and as many by purchase as the local laws of the miners in the district where such claims are located may allow; and the discoverer of any new lead or vein, not previously located upon, shall be allowed one additional claim for the discovery thereof.

**Working Claims.**—Within one year after locating a claim work on each claim is to be done to the value of fifty dollars, and for each successive year the same amount of work must be done, or the claim forfeited. If a corporation owns many claims on the same lode, the said work may be done on any claims so owned.

**Duty of County Clerk.**—It is the duty of the county clerk, after notice of a miners' meeting organizing a new district in his county, with a description of the boundaries, to record the same in a book in his office called "Book of

## LAW ENCYCLOPEDIA.

record of mining claims." He may appoint a deputy to reside in such district, and record all claims and water rights.

**Rights of Miners.**—Miners are empowered to make local laws in relation to the possession of water rights, the possession and working of placer claims, and the survey and sale of town lots in mining camps, subject to the laws of the United States.

**Ditches and Flumes.**—Ditches and flumes used for mining purposes, and permanently affixed to the soil, are real estate for all intents and purposes whatever.

**Sale of Mining Claim.**—All interests in placer or surface diggings may be sold and conveyed by bill of sale and delivery of possession, as in cases of the sale of personal property. Such bill of sale must be recorded within thirty days after its date in the office of the county clerk.

**Mortgages.**—A placer mining claim is to be mortgaged the same as chattel mortgages.

**Who may Hold Claims.**—The constitution of Oregon, article fifteen, section eight, is as follows: "No Chinaman not a resident of this state at the adoption of this constitution, shall ever hold any real estate or mining claim, or work any mining claim therein."

## NEVADA.

### SUITS AGAINST JOINT TENANT, TENANT IN COMMON OR COPARCENERS.

#### *An Act for the Encouragement of Mining.*

[Approved March 7th, 1865.]

**Section 1.** When three or more persons owning or claiming as joint tenants, tenants in common or coparceners, a majority of the number of feet, shares or interests, in any mining claim in this state shall have formed or shall hereafter form themselves into a corporation or organized association for the purpose of working and developing such mining claim, and shall proceed to actually work and develop the same, such corporation or association may, without demand except by commencement of action, institute

in any court of competent jurisdiction suit in its corporate or associate name, as upon an implied contract for the payment of money against any person [not a stockholder in or member of such corporation or association] owning or claiming to own in said mining claim as tenant in common, joint tenant or coparcener, for his or her proportion of the money actually expended or indebtedness assumed by such corporation or association in the actual and necessary working and development of said mining claim.

Sec. 2. The proportion of money expended or indebtedness assumed by such corporation or association, and for the payment of which such joint tenant, tenant in common or coparcener, is made liable under the provisions of this act, shall be deemed such an amount of money or indebtedness as bears the same proportion to the whole amount of money expended or indebtedness assumed as the interest of the mining claim, owned or claimed by such joint tenant, tenant in common or coparcener, bears to the whole of the mining claim.

Sec. 3. Any number of such joint tenants, tenants in common or coparceners, may be joined as parties defendant in any suit instituted under the provisions of this act; but each defendant shall be entitled to plead separately; and when the cause shall be tried by a jury, as many of the separate issues of fact as may be agreed upon by the parties may be tried by the same jury. Judgment shall be rendered for or against each defendant separately, and the costs of the suit may be apportioned among the several parties defendant, against whom judgment may be rendered, in such manner as to the court may appear just and equitable: *provided*, that in all cases the defendant, prior to the institution of suit under the provisions of this act, shall be entitled to three weeks' notice of the intention of such corporation or association to institute such suit, which notice may be either personally or by the publication in some newspaper published in the county within which such mining claim is located; and if none be published in said county, then in the nearest adjoining county.

Sec. 4. The summons shall specify : 1st. The amount of money actually expended or indebtedness assumed, by such corporation or association, in the actual and necessary working and development of said mining claims; and 2d. The amount due from each joint tenant, tenant in common or coparcener, as his or her proportion of such money or indebtedness.

Sec. 5. All suits under the provisions of this act shall be brought in the county within which the mining claim may be located; and when the defendant is a non-resident of the county within which suit is brought, but a resident of the state, service of summons may be had personally as in other cases or by publication in the same manner as provided by law for service of summons by publication where the defendant is a non-resident of the state and a resident of the state of California; and all of the provisions of law regulating proceedings in other civil cases shall, as far as the same are applicable, apply to suits instituted under the provisions of this act.

Sec. 6. The amount of money expended or indebtedness assumed by such corporation or association as the proportion due from such tenant in common, joint tenant or coparcener, for the actual and necessary working and development of said mining claim shall be a lien in favor of such corporation or association upon the interest of such tenant in common, joint tenant or coparcener, in such mining claim from the time such money was expended or indebtedness assumed by such corporation or association, which lien shall bind such interest from the time of such payment or assumption as against any subsequent purchaser, mortgagee or other person, acquiring a lien upon, or title to or interest in, the same. Suit may be instituted against the person owning or claiming such interest at the time of the commencement of the action for the recovery of the whole amount due upon each interest; and all judgments rendered in any action instituted under the provisions of this act, and any execution issued thereon, shall bind and run against such interest,



and no other property of the defendant s                      subject to execution on said judgment.

Sec. 7. All sales of any interest in a mining claim under an execution issued on a judgment obtained in any suit instituted under the provisions of this act shall be absolute, and the purchaser shall be entitled to the immediate possession of the interest purchased by him at such sale.

SUITS FOR DAMAGES CAUSED BY WORKING OF MINES.

*For the Protection of Mines and Mining Claims.*

[Approved Dec. 17th, 1862.]

Section 1. Any person or persons, company or corporation, being the owner or owners of or in possession under any lease or contract for the working of any mine or mines within the state of Nevada, shall have the right to institute and maintain an action as provided by law for the recovery of any damages that may accrue by reason of the manner in which any mine or mines has been or is being worked and managed by any person or persons, company or corporation, who may be the owner or owners or in the possession of and working such mine or mines under a lease or contract, and to prevent the continuance of the working and managing such mine or mines in such manner as to hinder, injure or by reason of tunnels, shafts, drifts or excavations, the mode of using or the character and size of the timbers used or in anywise endangering, the safety of any mine or mines adjacent or adjoining thereto.

Sec. 2. Any judgment obtained for damages under the provisions of this act shall become a lien upon all the property of the judgment debtor or debtors, not exempt from execution, in the state of Nevada owned by him, her or them, or which may afterwards be acquired, as is now provided for by law, which lien shall continue two years unless the judgment be sooner satisfied.

Sec. 3. Any person or persons named in the first two sections of this act shall have the right to apply for and obtain from any district court or the judge thereof within this state an order of survey in the following manner: An application shall be made by filing the affidavit of the per-

son making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and, as far as known, the names of such parties; also the location of the mine or mines of the parties making such application, and that he has reason to believe and does believe that the said parties complained of, their agent or employes, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant. Upon the filing of the affidavit as aforesaid, the court or judge shall cause a notice to be given to the party complained of or the agent thereof, which notice shall state the time, place and before whom, the application will be heard, and shall cite the party to appear in not less than five nor more than ten days from the date thereof, to show cause why an order of survey should not be granted, and upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics or miners or both, as the case may be, who shall proceed to make the necessary examination as directed by the court, and report the result and conclusions to the court, which report shall be filed with the clerk of said court. The costs of the order and survey shall be made by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in the first two sections of this act, by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case such costs shall be taxed against the defendant as other costs in the suit. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in making of such survey.

SUITS AGAINST DELINQUENT MEMBERS OF CORPORATIONS.

*An Act Empowering Corporations and Associations for Mining to Sue Individual Members.*

[Approved December 19th, 1862.]

Section 1. Corporations and associations and compa-

nies formed for mining purposes, are hereby authorized in their corporate or associated name to institute suits against any one or more of their members who may be delinquent in the payment of their assessments.

Sec. 2. Before such suit is brought before any court having jurisdiction of the amount, such delinquent, and the amount he may owe, and the intention to institute suit thereon, shall be advertised in a newspaper published in the county where the mining claim is located, and, if no newspaper be published in such county, then in a newspaper published in the nearest adjoining county, for at least once a week for one month before such suit is instituted.

Sec. 3. It shall be proved on the trial of such suit that the trustees or managing agents of said corporation, or association or company, were fully authorized to institute such suit by a majority of the members of said corporation, or association or company.

Sec. 4. The members of such corporation, association or company, shall be competent witnesses to establish the assessment and indebtedness of the delinquent member.

Sec. 5. This act shall apply only to such corporations, associations and companies, who are actually engaged in mining and for delinquency in assessments for mining.

#### SUITS AGAINST MINING COMPANIES.

*An Act relating to the Manner of Commencing Civil Actions.*

Approved December 20th, 1862.

Section 1. In all actions hereafter brought on contract, the defendants may be sued by the name or style under which the contract was made, and, upon its being shown on the trial who are the persons of whom the name or style are descriptive, judgment may be rendered against them as now provided by law.

Sec. 2. In all suits against any company organized for mining purposes, or against any company transacting business or keeping an office within this state, service may be made by reading and delivering a copy of the summons to

the president, secretary, cashier or managing agent, thereof, and, in case such service cannot be had, then by publication as now provided by law.

LIEN OF CONTRACTOR FOR LABOR ON TUNNEL OR SHAFT.

*An Act for Securing Liens to Mechanics and Others.*

[Approved November 21st, 1861.]

Sec. 12. When any person or persons shall make an express contract in writing with any organized or incorporated mining company, or with the owner or owners of any lode or lodes of gold- or silver-bearing quartz or of any other metal of value, or with the person or persons who were at the time of such contract in the actual possession of such lode or lodes, by himself or themselves, under *bona fide* claim of ownership, to cut, excavate and run, a tunnel from any given point into and through said lode or lodes, or sink a shaft thereon to the depth of fifty feet or more, and shall go on and complete such contract, he or they shall have a lien upon such lode or lodes, together with the tunnel thereto cut and run or the shaft thereto sunk, for the amount contracted to be paid, and all the provisions of this act respecting the mode of recording, securing and enforcing, mechanics' liens shall apply thereto.

FORMALITIES REQUISITE—CONSTRUCTION AND PROOF.

*An Act to Provide for the Conveyance of Mining Claims.*

[Approved December 12th, 1862.]

Section 1. Conveyance of mining claims shall hereafter require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate.

Sec. 2. All conveyances of mining claims, heretofore made by bills of sale or other instruments in writing, with or without seals, recorded or unrecorded, shall be construed in accordance with the lawful local rules, regulations and customs, of the miners in the several mining districts of this state, and, if heretofore regarded valid and binding in such districts, shall have the same force and

effect between the parties thereto as *prima facie* evidence of sale, as if such conveyances had been made by deed under seal.

Sec. 3. The location and transfers of mining claims heretofore made shall be established and proved, in contestation before courts, by the local rules, regulations or customs, of the miners in the several mining districts of the state in which such locations and transfers were made.

Sec. 4. This act shall take effect from and after its passage.

*Action for the Recovery of Mining Claims.*

[Act of March 5th, 1867.]

Sec. 4. No action for the recovery of mining claims or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, or those through or from whom he claims, were seized or possessed of such mining claim, or were the owners thereof according to the laws and customs of the district embracing the same, within two years before the commencement of such action. Occupation and adverse possession of a mining claim shall consist in holding and working similar claims in the vicinity thereof.

*An Act to provide for the Condemnation of Real Estate and other Property required for Mining Purposes.*

[Approved March 3d, 1866.]

Section 1. Whenever any real estate or other property in this state is, or becomes, necessary for the convenient and successful working of a mining claim, and the person or persons owning or possessed of the same, refuse to sell or convey the same to any person, mining company or corporation, needing the same for mining purposes, at such valuation or price as such person, company or corporation, may deem reasonable and just, said person, mining company or corporation, shall select one appraiser, and said owner or owners shall select one : *provided*, that if the owner or owners of such property, as aforesaid, shall refuse or fail to appoint or select an appraiser, as provided in this section, it shall be the duty of the district court to appoint

such appraiser, and the two so selected shall select a third, and the three shall appraise the real estate or property sought to be appropriated, after having been first sworn before some officer entitled to administer oaths, to make a true appraisement thereof to the best of their knowledge and ability. Within five days after the report of said appraisers, notice of which shall be given to both parties, the person or persons owning the property shall deliver to the person, company or corporation, requiring said property, a good and sufficient deed or conveyance of the premises, upon the payment of the amount named in the report of the appraisers; and upon such person or persons failing so to do, it shall be lawful for the person, company or corporation, requiring said property, as aforesaid, to petition the district court, of the judicial district within which said real estate or other property is situated, for a condemnation and sale of the same to such person, mining company or corporation.

Sec. 2. Said petition shall set forth, amongst other things, that said real estate or property, particularly describing the same, is needed by said person, mining company or corporation, for the convenient and successful working of his, or their or its, mining claim or ground, owned or possessed by said person, company or corporation; or, for the erection of buildings, roads or works, to be used in working the same, the fair valuation of such real estate or other property, so needed and sought to be condemned; that petitioner has tendered the amount of its value to the defendant or defendants, their agents or other legal representatives, before the commencement of the action or caused it to be done, that the defendant or defendants, their agents or legal representatives, have refused to accept the sum so tendered; and shall conclude with a prayer that the defendant or defendants be summoned to appear in the action, and show cause, if any can be shown, why the said property should not be by the court condemned, and he or they, said defendants, be compelled to convey and deliver a deed of the same to said petitioner or petitioners.

Sec. 3. At the time of the commencement of the action, the petitioner or petitioners shall pay, or cause to be paid, to the clerk of said district court, the sum or amount of money so tendered to the defendant or defendants, before the commencement of the action, and the same shall remain in the custody of the clerk for and on behalf of the defendant or defendants in said action, and subject to his or their acceptance until the said cause is tried and determined.

Sec. 4. Upon the trial of the cause, either party shall be entitled, if demanded, to a trial by jury, as in civil cases at law; and if, upon the trial, it shall be made satisfactorily to appear that said real estate or other property is necessary for the convenient and successful working of the mining claim or ground mentioned in the petition, in order to entitle the plaintiff or plaintiffs in said action to recover, and if said fact satisfactorily appear from the evidence, said court [if the same is tried without the intervention of a jury] or the jury before whom said cause is tried, shall proceed in the same action to assess and determine the value of said real estate or other property at the time of the institution of said action; and upon the payment of said sum or amount of money by the petitioner to the defendant or defendants in said action, or to the clerk of said court, for his or their use, said petitioner or petitioners shall be entitled to have and recover a judgment and decree of said court in its, his or their, favor, condemning said real estate or other property to his, its or their, own sole use and possession, and shall direct and decree that the defendant or defendants, in their stead, as a commissioner [to be appointed for such purpose by the court], proceed to make, execute, acknowledge and deliver, to the plaintiff or plaintiffs in said action, a deed of conveyance thereof.

Sec. 5. Costs in said action, except the costs of making, executing and delivering, the deed of conveyance, shall abide the event of the suit, as in other cases: *provided*, however, that in case the value of the land, or other property so condemned, shall not exceed the sum shown to have

been originally tendered therefor, the defendant or defendants shall be liable for the costs of said action.

Sec. 6. The practice in actions under this act shall be governed by the same rules as other civil actions at law, except as is otherwise provided in this act.

#### IDAHO.

*An Act Relating to the Discovery of Gold and Silver Quartz Lodes, and of the Manner of their Location.*

[Approved January 12th, 1866.]

Section 1. That any person or persons who may hereafter discover any quartz lead or lode, shall be entitled to one claim thereon, by right of discovery, and one claim each by right of location: *provided*, that no person shall be entitled to hold more than one claim by right of location on any one lead or lode, and that no person be entitled to have the right to locate or to hold by location or to have recorded, any claim or claims, on any lead or lode, unless he be a resident or inhabitant of this territory.

Sec. 2. That any quartz claim shall consist of two hundred feet in length, along the lead or lode, by one hundred feet in width, being fifty feet on each side of said lead or lode, covering and including all dips, spurs and angles, within the bounds of said claim, and also the right of drainage, tunneling and such other privileges, as may be necessary to the working of such claim: *provided*, that nothing in this act shall be so construed as to give any claimant or claimants any right to any separate or distinct lodes, other than the one claimed, running the width of said claim, or to obstruct any subsequent claimants in working and improving such distinct ledge; and the center of the ground between such ledges shall be the dividing line between such claimants.

Sec. 3. The locator or locators of any quartz claim or claims, on any lead or lode, shall, at the time of locating said claim or claims, place a substantial stake, not less than three inches in diameter, at each end of the claim so located: *provided*, that where two or more claims are located together, and recorded in one notice, then the



aforesaid stakes shall be placed at each end of the claims so located in one notice. On said stake at each end of said claim or claims, shall be placed a notice, in writing, and said notice shall contain the date of the location of said claim or claims, the name or names of the locator or locators, the name of the lead or lode on which said claim or claims are located, the number of feet so claimed by each of said locators, the distance to the nearest end of said claim or claims from the discovery stake; the direction, as nearly as possible, from the discovery stake, and the direction said claim or claims extend in, as nearly as may be, from the point designated as its or their commencement; and where more than one person joins in one notice in locating said claims, shall state the actual number of feet claimed, and the portion of the ground so claimed by each person so locating.

Sec. 4. Two or more persons may locate or take claims together in a body, by joining in a notice, specifying the number of claims so located, and the name of each person so joining in such location being written under the notice; but the claims so located shall not exceed two hundred feet for each person so locating; and said claims shall, on said notice, be numbered and designated as segregated claims, and shall designate the position of the said segregated ground in said claims, so located, in one notice, including, when necessary, a discovery claim, except where it may be necessary to include a claim by right of discovery, and the notice shall then state in whose name or names said discovery claim is located. Persons so joining in one notice shall be considered as tenants in common, so soon as the work hereinafter required to be done shall be fully finished and performed. The work hereinafter required to be performed on a quartz claim, to entitle the locator or his assigns to hold the same as real estate, may be performed on any one of the claims so held under one notice: *provided*, it be equal in value to one hundred dollars for each and every two hundred feet under one notice, including the discovery claim; but when any claims have been located by two or more persons, in one notice, as soon as the

work as required by this act has been performed on said claim or claims, to wit: One hundred dollars' worth of work for each and every two hundred feet included in the notice locating said claims, the said claimants shall be deemed tenants in common, and shall be subject to all the rights, privileges and benefits, responsibilities and liabilities, of tenants in common.

Sec. 5. All claims shall be recorded in the recorder's office of the county in which such lead or lode shall be discovered, by filing with the recorder a copy of the notice placed on the ledge or lode, or a similar notice, containing the name of the ledge or lode, the name or names of the locators, the number of feet claimed, the date of location, the direction in which the ledge or lode runs, the district and county in which the ledge or lode may be, and the general distance and direction from some known or initial points, and any other fact or statement by which the ledge may be identified, known or found. Said notice shall be filed within ten days after the location of any claim or claims on any ledge or lode, and the person or persons named in the notice shall, each one for himself, and not one for the other, within three days after the filing of the notice, appear in person at the recorder's office and authorize the recording of the same in his name or names, and no record shall be legal or valid without the personal appearance of the person or persons named in the notice. At the recorder's office, the recorder shall record the same in a book kept for that purpose and called the "book of quartz claims," to which there shall be a complete and full duplicate index kept by the recorder, and that the recorder be entitled to receive a fee of twenty-five cents for filing each notice, one dollar for each quartz claim recorded, and twenty-five cents for indexing each name in notice recorded, with the name or names thereon: *provided*, that if said lead or lode be more than thirty miles from the county seat of said county, then the time for recording the same may extend to fifteen days. And all persons recording any claim or claims, shall take an oath before the recorder of said county that said claim or claims have not been here-

tofore located according to law, or, if so located, that the said claim or claims have been abandoned or forfeited by non-fulfillment of the provisions of this act.

Sec. 6. Quartz claims located and recorded in accordance with the provisions of this act, shall entitle the person or persons so locating and recording to hold the same as real estate, to the use of himself, his heirs and assigns: *provided*, that, within one year from and after the date of recording, he or they shall cause to be performed one hundred dollars' worth of work for each and every claim of two hundred feet of said lead or lode, said work to consist of the following: The stripping of the lead or lode, sinking of shafts, excavating of tunnels, obtaining machinery and preparing material, for working said lead or lode in good faith.

Sec. 7. Conveyances of quartz claims shall require the same formalities and shall be subject to the same rules of construction as the transfer and conveyance of real estate.

Sec. 8. Any person or persons who shall willfully and maliciously tear down or destroy any notice posted on quartz claims, or tear down or destroy any stakes marking quartz claims, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars or not exceeding one hundred dollars, or by not less than thirty days' nor more than six months' imprisonment in the county jail, or by both such fine and imprisonment; and all justices of the peace, in their respective counties, shall have jurisdiction of such offenses.

Sec. 9. [Is a repealing section.]

Sec. 10. Any person or persons desiring to preserve and perpetuate testimony as to the sufficiency of the amount of work done on any claim or claims to entitle him or them to hold them as real estate, according to the provisions of section six of this act, may take two disinterested persons to view such work, who shall carefully examine the same, immediately after which they shall go before the county recorder, or other officer by law authorized to administer oaths in the county, and take and subscribe an affi-

davit containing, first, a description of the location of the claim or claims on which the work is performed, the character and value of such work and the date when they reviewed the same, which affidavit shall be filed by the county recorder and carefully preserved. Such affidavits or certified copies of the same, under the certificate and seal of the county recorder, who has the custody of the original affidavit or affidavits, shall, in any court in this territory, be *prima facie* evidence of the character and amount of labor performed on the claim or claims which are described in such affidavit or affidavits. The recorder shall receive a fee of fifty cents for filing and preserving the affidavits required by this section.

Sec. 11. Any person or persons who may desire to run any tunnel into any hill or mountain, for the purpose of discovering or working mineral-bearing quartz leads or lodes, shall be entitled to hold five hundred feet each way from the line of the tunnel on every lead or lode so discovered: *provided*, the said lode has not been previously claimed and held according to law; and said person or persons shall also be entitled to hold three hundred feet square at the entrance or entrances of said tunnel or tunnels, for building, deepening or other necessary, purposes: *provided*, further, that nothing in this act shall be so construed as to invalidate the vested rights of other persons.

Sec. 12. The manner of locating tunnels shall be by posting a notice or notices at the entrance or entrances of the tunnel, describing the line of the tunnel and of the dumping ground, which notice shall be signed by all the parties interested, stating the interest of each person.

Sec. 13. A copy of said notice shall be recorded in the office of the county recorder within ten days from the time of location, and the recorder shall receive two dollars for recording said notice.

Sec. 14. The parties claiming any tunnel shall, within one year from the time of the location, perform, or cause to be performed, five hundred dollars' worth of labor on said tunnel; and when a quartz lead or lode belonging to such tunnel company shall be struck, it shall become real estate,

and any person or persons interested in any tunnel who shall fail to perform his or their proportion of the labor required by this act, within the time specified, shall forfeit all his or their rights in said tunnel, and those who do perform their proportion of said labor in the required time shall acquire all the rights of such delinquent parties, and shall proceed immediately to perform the requisite amount of labor; and any tunnel site becoming vacant by non-fulfillment of the law shall not be subject to re-location by the same parties.

Sec. 15. This act to take effect from and after its approval by the governor.

UNITED STATES.

*An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes.*

[Approved July 26th, 1866.]

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.\*

\* The public domain being open to exploration and occupation by "all citizens of the United States and those who have declared their intention to become citizens," it follows that aliens have no rights to the possession of mining ground on the public domain that citizens and those who have declared their intention to become such are bound to recognize or respect. Only *while persons* may become citizens of the United States. Only *while persons* may declare their intention to become such. Only *while persons*, not citizens, may occupy the public domain, because only *while persons* may become citizens by naturalization. This is clearly the intention of congress, as no good reason can be given why aliens should be excluded from the public domain under the preëmption and homestead laws and not under the mining laws. Indeed, there are weightier reasons for their exclusion from the mining than from the farming lands. The product of their

Sec. 2. And be it further enacted, that, whenever any person or association of persons claim a vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended, in actual labor and improvements thereon, an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local land office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws, customs and rules, of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

Sec. 3. And be it further enacted, that upon the filing of the diagram, as provided in the second section of this act, and posting the same on a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days, and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements and the character of the vein exposed; and upon payment to the proper officer of five dollars per acre, together with the cost of such survey, plat and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during

labor in the first case does not remain in the country; in the second it does. Miners may make rules excluding Chinese and other foreigners from the mines by virtue of section one. See MINING FORMS.

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session to such claim, when a patent may be issued as in other cases.

Sec. 7. And be it further enacted, that the president of the United States be and is hereby, authorized to establish additional land districts, and to appoint the necessary officers under existing laws, whenever he may deem the same necessary for the public convenience in executing the provisions of this act.

Sec. 8. And be it further enacted, that the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Sec. 9. And be it further enacted, that whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *provided*, however, that whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Sec. 10. And be it further enacted, that whenever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intentions to become citizens, which homesteads have been made, improved and used, for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar or copper, discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not



to exceed one hundred and sixty acres; or said parties may avail themselves of the provisions of the act of congress, approved May twentieth, eighteen hundred and sixty-two, entitled "An act to secure homesteads to actual settlers on the public domain," and acts amendatory thereof. See **HOMESTEADS.**

Sec. 11. And be it further enacted, that upon the survey of the lands aforesaid the secretary of the interior may designate and set apart such portions of said lands as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

### FORMS.

#### *Notice of Claim of Mining Land*

##### NOTICE.

The .... and mining company claim .... feet of this ground for mining purposes, being at the rate of .... feet per man, running from this in a ..... direction . . . feet to a pile of rock and a stake, from thence .... feet in a ..... direction to a pile of rock and a stake, from thence .... feet in a ..... direction to a pile of rock and a stake, from thence .... feet in an ..... direction to this, the place of beginning.

Located ....., 18..

[Location.]

#### *Another Form.*

##### NOTICE.

We, the undersigned, claim .... feet of this ground for mining, this being the southeast corner.

[Location.]

#### *Renewal Notice of Claim of Mining Lands.*

##### NOTICE.

....., 18..

This is to certify that the ..... company lays this ground over until the .... day of ....., by renewing the notice and names and recording this ground under ..... law.

The undersigned claim .... hundred feet of this ground.

*Another Form.\**

Know all men by these presents, that we, the undersigned, claim .... feet of this ledge, with all its dips, spurs and angles, for the purpose of mining, under the laws of this district, being at the rate of .... hundred feet per man, and running from this notice along this ledge in a ..... direction .... thousand feet to a pile of rock and a stake, and also .... feet on each side thereof.

This ledge shall be known as the ..... ledge [or, "claim"].

....., 18..

*Bond to Perform Mining Contract.*

[See BONDS AND AGREEMENTS.]

*Deed or Bill of Sale of Mine.*

[See DEED.]

*Mortgage of Mining Claim.*

[See MORTGAGE.]

*Notice of Intention to Levy Assessment by virtue of the California Act of April 2d, 1866.*

## NOTICE, NUMBER ONE.

The undersigned, a member of the ..... company, desires to sink a shaft .... feet on the .... or claim, ..... county, ...., for the purpose of prospecting and working the same. To enable such work to be done, he desires to have an assessment levied against the owners of the said claim or ledge; and a meeting for the purpose of levying such assessment will be held on the .... day of ....., 18.., in the ..... of ..... street, ....., at the hour of .... o'clock.

...., 18..

To .....  
.....  
.....

## NOTICE, NUMBER TWO.

You will please take notice, that the assessment levied on the .... day of ....., 18.., of .... dollars per share, or interest, in the ..... company, for the purpose of sinking a shaft on said ledge or claim, is now due, and payable to ....., esq., secretary of said company, at his office, at ..... Said mine is situated in the ..... district, ..... county, ....., and the debt

\* The mining laws of most of the counties and districts require the above notice to be recorded with the mining recorder, and that a certain amount of work shall be performed on the ledge or claim within a specified time.

this assessment has been levied to pay was contracted in sinking a shaft, as aforesaid, on said claim or ledge.

....., 18..  
 To .....  
 .....  
 .....

MINING LAWS AND REGULATIONS UNDER THE GRANT OF POWER BY CONGRESS AND  
 THE STATE LEGISLATURES.

*Mining Laws of .....*

Section 1. All American citizens may locate and hold claims.

Sec. 2. The extent of a claim upon any bar of the river or bank of the same, or upon .... creek, shall be fifty feet in width, running at right angles with the bed of the same from the center of the stream, back to the adjacent mountain.

Upon any flat or plain, the size of a claim shall be one hundred and fifty feet to each share; and in any gulch or ravine, each person shall be entitled to hold three hundred feet of the same. In all claims which must be drained, either by ditching or fluming, sixty feet in length, running up and down the stream, and the width of the river to low-water mark.

Sec. 3. No person shall hold more than one claim, in a working condition, at the same time. The boundaries of all claims must be plainly marked by written notices, with the names of the parties attached, and all claims which are located, to be worked at any future time, shall be recorded in a book kept by a justice of the peace for that purpose, and all claims so located upon any flat or bar, or in any gulch or ravine, or in the bed of the river, shall be worked within fifteen days of the time such claim is in a workable condition. And all claims shall be worked at least one day in three after the expiration of the fifteen days, or they will be considered abandoned.

Sec. 4. No transfer or sale of a claim shall be considered valid unless such transfer is noted on the record.

Sec. 5. The justice of the peace shall receive one dollar for recording each claim, and fifty cents for recording or noting each transfer.

*Another Form*

At a meeting of the miners of .... county, the following rules and by-laws were adopted:

Section 1. That any person or persons entitled to the laws of the United States or the laws of the state of ...., to hold a mining claim, may, either by pre-emption or purchase, hold .... hundred feet square of ground.

Sec. 2. No person or persons shall, in locating a claim, if he or they take a less width than .... hundred feet, extend the limits beyond .... hundred feet in length.

Sec. 3. Any person or persons claiming ground, either by pre-emption or purchase, who does not within .... days from the time such claim is in workable order, either work, or cause the same to be worked, shall forfeit his or their right to the same.

Sec. 4. Claims shall be signalized by stakes firmly set in the ground, with notices, or by notices placed upon trees or other objects sufficiently firm.

Sec. 5. Any person or persons who shall be convicted of destroying or pulling down any notice or stake, or both, which are the signs of a legitimate claim, shall be liable to a fine of not less than .... dollars, nor more than .... dollars, as in the discretion of the court or jury may seem proper.

Sec. 6. Where more than one person is associated in any claim, the name of each individual of such company shall be legibly written upon the notice, and no more ground shall be deemed taken than there are names upon the notice.

Sec. 7. All mining laws heretofore in existence, either at .... or ....., are hereby repealed, and we, the miners, do solemnly swear and pledge ourselves, mutually and individually, to abide by and support the foregoing by-laws.

Sec. 8. No person shall hold more than .... claims at the same time by location, any thing in the first section to the contrary notwithstanding.

Sec. 9. Any person disabled by illness for any length of time shall not lose his right in consequence of not working the same during such illness.

Sec. 10. All persons having notices upon dry claims must renew the same every .... days from date, or otherwise they become void.

Sec. 11. These by-laws shall take effect from and after .... .., 18..

....., President.  
....., Secretary.

#### *Mining Laws of ..... District.*

Adopted at a mass meeting, .... .., 18.., revised .... .., 18.., by a mass meeting; and again revised .... .., 18.., by a mass meeting of the miners of .... mining district.

#### BOUNDS OF ..... MINING DISTRICT.

Commencing at a .... above and near ....., the line running from thence, in a .... direction, to the .... side of ....., thence to ....., on .... .., thence to a ....., at the .... of ....., thence following said ....., to the .... river, thence down the river to ....., thence, in an .... direction to .... creek, intersecting it .... feet above the ....., thence up the creek, to .... .., thence up ..... to the .... .. thence, in a .... line, to the ...., the place of commencement.

*Resolved*, that the state legislature of .... has provided by statute and accorded to the miners of the United States, the right of making all laws, rules and regulations, that do not conflict with the constitution and laws of ....., "in all actions-respecting 'mining claims:'"

*Resolved*, therefore, that we, the miners of .... mining district, do ordain and establish the following

#### RULES AND REGULATIONS.

Article 1. A claim for mining purposes, within the district, shall not exceed .... hundred feet square to each man, nor be more than .... hundred feet in length.

Art. 2. That no man within the bounds of this district shall hold more than one workable claim.

Art. 3. That each and every man within the bounds of this district shall perform actual labor upon such claim .... day out of every .... or employ a substitute, otherwise such claim shall be forfeited: *provided*, that claims on dry gulches or other places, that can be worked advantageously only by water brought by water companies, etc., shall be good till water is brought in: *provided*, also, that wet claims and carting claims not workable in the rainy season, shall be good also, without working, from the .... day of .... to the .... day of ....

Art. 4. The bounds of claims shall be established and defined by putting up good and substantial stakes at each corner, and recording the description of the lot in the books of the precinct registry, and by putting up one notice at each end of a claim, signed by each person or individual of a company, and the names of the several persons holding such claim shall be signed in their own handwriting in the book of registry.

Art. 5. When two or more claims join together and are worked by companies, such companies can work any portion of such claims as they may deem expedient, complying with article three.

Art. 6. No person not a citizen of the United States, or one who has not declared his intention to become such, shall hold or work any claim or mine in this district.

Art. 7. That no law passed by the miners of this district shall be considered retroactive.

Art. 8. That, in case of sickness, no miner shall forfeit his claim.

Art. 9. That all companies going to great expense in running tunnels in order to prospect the hills, shall be entitled to two claims for each person of a company.

Art. 10. That a recorder of this mining district shall be chosen, and shall be paid .... cents for recording the title of each mining claim. The recorder shall have the custody of the books, laws and proceedings, of this mining district.

Art. 11. That all foreigners subject to pay a foreign miner's tax, when called upon to show their license, who cannot or will not do the same, shall not be permitted to hold a claim in this mining district; and any such claim purporting to be held by him or them shall be forfeited.

Art. 12. .... hundred feet along the base, and running from base to base through the mountain, shall constitute a tunneling claim in this mining district, and no miner shall hold more than one tunneling claim in addition to the other claims already provided for by the mining laws of this district.

Art. 13. And each tunneling company may work its claim by employing such number of persons to work upon the same as it may deem expedient.

Art. 14. And no such claim shall be considered forfeited until .... days after its abandonment.

.....

Secretary.

.....

President.

*Notice of Claim for Oregon.*

## NOTICE.

....., ....., 18..

Know all men by these presents, that we, the undersigned, claim .... feet of this ledge, with all its dips, spurs and angles, for the purpose of mining, under the laws of the state of Oregon and this district. Said claim of .... feet is according to the laws of this district, and at the rate of .... feet for each name on this notice as locator. Said .... feet, which we hereby claim, commence at this notice and run along this ledge in a ..... direction. We also claim .... feet in width on each side of this lead or claim.

[Signed]

.....  
 .....  
 .....

**NOTE.**—The foregoing forms of mining rules or laws may be varied so as to embrace any kind of quartz-mining districts. They can be made applicable to all the states and territories of the Pacific coast.

## MINORS.

**Age of Majority.**—Males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent, guardian or other person, under whose care or government they may be, they shall have been lawfully married.

**Disability of Minor.**—Minors cannot do any act to the injury of their property which they may not repudiate when they arrive at full age.

**Void and Voidable Contracts.**—Every contract entered into by a minor, which is to his prejudice, is void, and a contract which is to his benefit is good; and one that is uncertain whether prejudicial or advantageous is voidable at the election of the minor.

If the Contract be voidable, it is binding on the adult party thereto until it is rescinded by the minor.

**Contract for Necessaries.**—A contract for necessaries is binding on an infant, and he may be sued on such a contract, but the articles must be shown to have been necessary for him under the circumstances and condition in

which he was placed when they were furnished. Necessaries for a minor's wife and children are necessaries for him.

**Frauds of Infant.**—Infancy cannot be taken advantage of to protect a fraudulent act. An infant has been held liable for deceit in obtaining a loan of money on the fraudulent affirmation that he was of age.

**Necessaries for Infant.**—A father is not bound by the contract of his son, even for articles that are necessary and suitable for the minor, unless an actual authority be proved or the circumstances be sufficient to imply an authority.

**Liability of Father.**—The father is liable for necessaries furnished his minor children, but they must be strictly necessaries, such as the father is in duty bound to furnish, and has not provided. By "necessaries," is meant that which is absolutely necessary to sustain life and health. See NECESSARIES.

**May Marry.**—Minors are capable of contracting marriages, and such marriages are legal and binding on the parties.

**Criminal Practice.**—In criminal practice, an infant under the age of fourteen years shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown; and a person counseling, advising or encouraging, an infant to commit a crime, shall be prosecuted for such offense, when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted had the person so counseling or advising committed the offense directly.

CALIFORNIA.—STATUTORY PROVISIONS, 1871.

See APPENDIX.

## MISTAKE.

**Mistake.**—That result of ignorance of law or fact which has misled a person to commit that which, if he had not been in error, he would not have done.

**As a General Rule,** both at law and in equity, mis-

takes at law do not furnish an excuse for wrongful acts or a ground of relief from the consequence of acts done in consequence of such a mistake. An act done or a contract made under a mistake, or ignorance of a material fact, is voidable and relievable at law.

## MORTGAGES.

**Mortgages, and What they Are.**—A mortgage is given or executed by a person or body corporate to secure a debt due or to become due ; and the person or body corporate who executes it is a "mortgagor"; the person or body corporate who takes it is the "mortgagee."

**Forms of.**—A mortgage is usually in the form of a deed, conveying the property mortgaged to the mortgagee, with a clause inserted stating that the deed is executed to secure the payment of a stated sum of money, and that the deed shall be void when such money is duly paid. No particular form of words is necessary. Where an instrument or two or more taken together, shows an amount due or to become due, and describes the property given as security, it will be sufficient.

**Mortgage Incident to a Debt.**—A mortgage is a mere incident to the debt which it secures, and follows the transfer of the note or other evidence of debt, with the full effect of a regular assignment. And if the mortgage be given to secure two notes, the indorsement and delivery of one of the notes carries with it a *pro rata* portion of the security ; and any extension of time given on a note extends also the time for payment of the mortgage.

**Against Estates.**—A claim against the estate of a deceased person, although secured by mortgage, must be presented to the executor or administrator, with the necessary affidavit, or suit cannot be maintained for its recovery.

**On Homestead.**—A mortgage given upon a homestead will not avail as a lien, to the extent of the homestead exemption—five thousand dollars—unless the wife join in the execution of the instrument. See **HOMESTEAD**.



**Possession by Mortgagee.**—Possession by the mortgagee cannot abridge, enlarge or otherwise affect, his interest, nor convert that which was previously a security into a seizin of the freehold.

**If the Mortgage Confers no Right** of possession, entry under it can give none. It does not change the relation of debtor and creditor, or impair the estate of the mortgagor, but leaves the parties exactly as they stood previous to such possession.

**Description.**—It is of the greatest importance that the land or property mortgaged should be *fully* and *correctly* described, or trouble may ensue. The *form* is nothing; the *description* is everything.

**Recording of.**—Like deeds, mortgages shall be recorded in the county where the property mortgaged is situated. See RECORDING.

**Statutory Provisions.**—The following statutory provisions explain themselves:

**Personal Mortgages.**—A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz claims and all other such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate are required by law to be acknowledged, and recorded in the office of the recorder of the county in which the property is situated, shall have the same effect against third persons as mortgages upon real property.

#### CHATTEL MORTGAGES, CALIFORNIA AND IDAHO.

*Supplement of April 29th, 1857, as amended April 19th, 1861.*

Section 1. Chattel mortgages may be made on the following property to secure the payment of just indebtedness: Upholstery and furniture used in hotels and public boarding-houses, when mortgaged to secure the purchase-money of the identical articles mortgaged, and not other-

wise ; saw-mill, grist-mill and steamboat, machinery ; tools and machinery used by machinists, foundrymen and other mechanics ; steam-boilers, steam-engines, locomotives and the rolling stock, of railroads ; printing-presses and other printing materials ; machinery and apparatus for mining purposes ; instruments and chests of a surgeon, physician or dentist ; libraries of all persons. No mortgage made by virtue of this act shall have any legal force or effect [except between the parties thereto], unless the residence of the mortgagor and mortgagee, their profession, trade or occupation, the sum to be secured, the rate of interest to be paid, when and where payable, shall be set out in the mortgage, and the mortgagor and mortgagee shall make affidavit that the mortgage is *bona fide*, and made without any design to defraud or delay creditors, which affidavit shall be attached to such mortgage. [The same in Idaho, except the following is the property that may be mortgaged, viz: "Saw-mills, with the machinery connected therewith ; printing-presses and printing material ; mining claims with improvements thereon ; quartz mills with the machinery connected therewith ; upholstery and furniture in hotels and public houses, when mortgaged to secure the purchase-money thereof ; and all buildings which are not fixed permanently to the soil."]

**To be Recorded.**—Sec. 2. All mortgages made in pursuance of this act [with affidavit affixed] shall be recorded in the county where the mortgagor lives, and also in the county or counties where the property is located or used : *provided*, that property *in transitu* from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, shall, during a reasonable time for such transportation, be considered as located. It shall be the duty of the county recorders of this state to provide proper books of record and of index, in which they shall make a true copy or record [the same in Idaho to here ; the balance of the section only applies to California] of all mortgages made in pursuance of the provisions of this act and left with them for record, and

they shall enter, in alphabetical order, the names of the mortgagee and mortgagor in such index books. The recorders shall note on the mortgages and in the index books the time [in like manner as mortgages on real estate] when the same was received into the office for record, and the recording shall take effect from that time. The recorder's fees for recording and indexing shall be the same as are allowed him by law for like services for recording deeds of real estate, to be paid in advance by the person presenting the same for record.

**When Valid.**—Sec. 3. No chattel mortgage shall be valid [except between the parties thereto], unless the same shall have been made, executed and recorded, in conformity to the provisions of this act: *provided*, however, if the mortgagee receives and retains the actual possession of the property mortgaged, he may omit the recording of his mortgage during the continuance of such actual possession.

**Redemption.**—Sec. 4. A right of redemption shall remain in the mortgagor until the same shall have been foreclosed by due process of law, or by agreement between the parties to the mortgage, which agreement shall be entered on the record of the mortgage [the same in Idaho to here], and for the entering of which the recorder shall be entitled to the same rate of fees as for recording the original, to be paid in advance by the parties to the mortgage.

**Attachments of.**—Sec. 5. All property mortgaged, in pursuance of the provisions of this act, may be attached at the suit of the creditors of the mortgagor or mortgagee. When attached at the suit of the creditor of the mortgagor, such creditor shall pay or tender to the mortgagee the actual amount due him on such mortgage, before the officer making such attachment shall be entitled to the actual possession of such property. When property thus situated and thus redeemed, shall have been sold by the officer by virtue of due legal proceedings, out of the proceeds of the sale he shall :

1st. Pay to the creditor the amount advanced by him to pay the mortgagee, with legal interest thereon.

2d. Pay all legal costs and fees appertaining to the judgment, execution and sale.

3d. Pay the judgment creditor the amount of the judgment, and any remaining surplus pay to the judgment debtor. If the creditor or mortgagor prefers, he may cause to be attached the right of redemption of said mortgagor, and cause the same to be sold, subject to the rights of the mortgagee. Such attachment shall be made by leaving a copy of the writ of attachment, with notice of the attachment, with the mortgagee. When a sale of such equity is made on an execution obtained by such attaching creditor, the sum realized shall be applied to the payment of costs, fees, discharge of the execution and any remainder paid to the judgment debtor. When the interest of the mortgagee shall be attached, a copy of the writ of attachment shall be left with the mortgagor, with notice of the attachment; and any payment made by him to the mortgagee after such notice, shall not release the attachment or affect the rights of the attaching creditor; but said mortgagor may pay the amount due on said mortgage to the officer who made the attachment, and thereupon said officer shall release said attachment and hold the money so paid him in the same manner as if he had originally attached said money.

**Mining Rules.**—Sec. 6. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations or customs, in regard to the locating, holding or forfeiture, of claims, but in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations and customs, of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure: *provided*, that such compensation shall in no case exceed

the amount realized from the claim by a foreclosure and sale.

**Time allowed to Record.**—Sec. 7. The mortgagee in all mortgages made under this act, shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office, where such mortgage ought by law to be recorded to conform to the provisions of this act, before any attachment shall be valid, made by the creditors of the mortgagor.

#### MORTGAGES, NEVADA

**Mortgage of Personal Property.**—No mortgage of personal property, hereafter made, shall be valid against any other person than the parties thereto unless possession of the mortgaged property be delivered to, and retained by, the mortgagee: *provided*, that a mortgage upon growing crops, executed, acknowledged and recorded, shall be valid against third parties, without such delivery of possession, and such lien shall continue until after such crop shall have been harvested, threshed and delivered, to the order of the mortgagee: *provided*, such mortgage may be executed as well before as after the planting of the crop; and if executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crop when planted. The affidavit of both the mortgagor and mortgagee, or some one in their behalf, in case of absence from the county, shall be appended or annexed to the mortgage, setting forth that the mortgage is given for a debt actually owing from the mortgagor to the mortgagee, and the same is not made nor received with intent to hinder, delay or defraud, any creditor of the mortgagor. Any growing crop growing as aforesaid may be seized under attachment or execution, and the surplus over and above the mortgaged debt secured to any other creditor of the mortgagor by serving upon the mortgagee, or in his absence from the county, upon his agent or other person in charge or possession of such crop, a copy of the attachment or

execution. But the actual possession of such crop shall not be taken from the mortgagee, unless full payment of the mortgagee's demand, with interest, be first paid, which if done by a creditor of the mortgagor, shall entitle him to hold such crop and the possession thereof, under his levy for repayment to him of the amount so paid, with interest, as provided in the mortgage so paid, in addition to his own individual demand.

**MORTGAGES, LEGAL PROCEEDINGS—CALIFORNIA, NEVADA AND IDAHO.**

**Proceedings to Foreclose.**—There shall be but one action for the recovery of any debt or the enforcement of any right secured by mortgage upon real estate or personal property. In actions for the foreclosure of mortgages, the court shall have power, by its judgment, to direct a sale of the incumbered property [or, so much thereof as may be necessary], and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and, if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment shall then be docketed for such balance against the defendant or defendants personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. [What follows applies to California.] No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action need not be made a party to such action; and the judgment therein rendered and the proceedings therein had shall be as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to such action, and shall in all respects have the same force and effect.

**Disposition of Surplus Money after Sale.**—If there be a surplus money remaining after the payment of the amount

due on the mortgage, lien or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and, in the meantime, may direct it to be deposited in court.

**Proceedings when the Debt Falls Due at Different Times.**—If the debt for which the mortgage, lien or incumbrance, is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

**Mortgage not a Conveyance.**—A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.\*

#### MORTGAGES, OREGON.

**Mortgage of Personal Property.**—The provisions of the laws of Oregon on the subject of mortgage are few and simple.

**Deposit with Clerk of County.**—A mortgage may be in the form as mortgages of real estate. It must be filed with the clerk, and it or a copy left for public inspection. The names of the parties to it must be entered in a book kept for that purpose.

**When Invalid.**—Such mortgages become invalid against creditors at the end of one year from the filing, unless, within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make and annex to the instrument an affidavit setting forth the in-

\* The supreme court of California have construed this section so as to permit the parties to a mortgage to insert therein a power to sell by the mortgagee, in case default in payment is made.

*Chattel Mortgage on Mining Claims, Flumes, Tunnels, etc.*

This indenture, made this .... day of ... , in the year of our Lord one thousand eight hundred and ...., between ...., whose residence is at ....., county of ..... in the state of ....., and who is by profession, trade or occupation, a quartz-mill proprietor and operator, party hereto of the first part, and ...., whose residence is at the county of ....., in said state, and who is by profession, trade or occupation, a ....., party hereto of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of .... dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, unto the said party of the second part, and to his heirs and assigns, forever, all and singular [here insert description of quartz claims, with the machinery and buildings connected therewith, or, "water-ditches, flumes and aqueducts," or, "tunnels, cuts and other improvements, in mining claims," etc.] to have and to hold the above-mentioned and described premises, together with all and singular the tenements, hereditaments, franchises, rights, privileges, implements, tools, buildings, machinery and other property and appurtenances, thereunto belonging or in anywise appertaining.

*Provided*, nevertheless, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the sum of .... dollars, on the .... day of ...., A.D. 18.., at the banking-house of ...., in the county of ....., state aforesaid, with interest thereon at the rate of .... per cent. per month from the date hereof, until paid, according to the true intent and meaning of a certain promissory note, a copy of which is as follows: [here insert copy of note], then these presents shall be void. But, in case default be made in the payment of the principal sum or interest, as above provided, then the said party of the second part, his executors, administrators or assigns, are hereby authorized and empowered to sell the premises above described, with all and every of the appurtenances, in the manner and form prescribed by law, or by an agreement between the parties to this mortgage, which agreement shall be entered on the record of this mortgage, and out of the money arising from such sale to retain the said principal sum and interest, together with the costs and charges of making such sale and counsel fees, not to exceed .... per cent. upon the full amount which shall then be due, the overplus, if any there be, to be paid unto the said party of the first part, his heirs, executors, administrators or assigns.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

[Signed]

..... [L.S.]

Signed, sealed and delivered, in presence of

.....



State of ..... }  
 county of ..... } ss.

....., the mortgagor in the foregoing mortgage, named ..... , and  
 ..... , the mortgagee in said mortgage, named ..... , being severally  
 duly sworn, each for himself, doth depose and say that the aforesaid  
 mortgage is *bona fide*, and made without any design to defraud or delay  
 creditors.

[Signed]

.....  
 .....

Subscribed and sworn to before me, this .... day of ....., A.D. 18..

.....,

Notary public.

*Mortgage without Bond, Note or other accompanying Instrument.*

This indenture, made this .... day of ...., in the year of our Lord one  
 thousand eight hundred and ...., between ..... and ..... , of ....,  
 parties of the first part, and ..... , party of the second part, witnesseth,  
 that the said parties of the first part, for and in consideration of the sum of  
 .... dollars, to them in hand paid by the said party of the second part, do  
 hereby grant, bargain, sell and confirm, unto the said party of the second  
 part, and to his heirs and assigns forever, all [here insert description], to-  
 gether with all and singular the tenements, hereditaments and appurte-  
 nances, thereunto belonging or in anywise appertaining.

To have and to hold unto the said party of the second part, his heirs and  
 assigns forever, by way of mortgage, to secure the payment of the sum of  
 .... dollars, payable by said parties of the first part to said party of the  
 second part, in .... months from this date, with interest thereon at .... per  
 cent. per month, and these presents shall be void if such payment be made.  
 But, in case default be made in the payment of either the principal or any  
 installment of interest, as provided, then the whole sum of principal and  
 interest shall be due at the option of the party of the second part, and suit  
 may be immediately brought and a decree be had to sell the premises above  
 described, with all and every of the appurtenances or any part thereof, in  
 the manner prescribed by law, and out of the money arising from such sale  
 to retain the said principal and interest, although the time for payment of  
 said principal sum may not have expired, together with the costs and  
 charges of making such sale, and of suit for foreclosure, including counsel  
 fees at the rate of .... per cent. upon the amount which may be found to  
 be due for principal and interest by the said decree, and the overplus, if  
 any there be, shall be paid by the party making such sale, on demand, to  
 the parties of the first part, their heirs and assigns.

In witness whereof, the said parties of the first part have hereunto set  
 their hands and seals the day and year first above written.

.....  
 .....

Signed, sealed and delivered, in the presence of

.....

*Mortgage on Note, with full Conditions.*

This indenture, made the .... day of ...., one thousand eight hundred and ...., between ...., of the county of ....., party of the first part, and ...., of ....., party of the second part. Whereas, the said .... is justly indebted to the said party of the second part in the sum of .... dollars, ..... of the United States, secured to be paid by his certain promissory note, bearing even date with these presents, and which said note is in the words and figures following :

\$.....

....., 18..

For value received, I promise to pay to ...., or order, in ... months from date, the sum of .... thousand dollars, with interest thereon at the rate of .... per cent. per month, payable monthly in advance, on that day of each and every month corresponding with the date of this obligation : all sums of principal and interest due and to grow due hereon, to be paid at the banking-house of .... & Co., in the city of ....., without grace. And should the interest hereafter to grow due on this obligation or any part thereof, be in arrear and unpaid for the space of .... days after the same should have been paid, as above provided, then it shall be lawful for the said payee or for the holder hereof, to consider the whole amount of the said principal sum which shall then be unpaid, as immediately due and payable, with interest thereon as aforesaid, although the period above expressed for the payment thereof shall not have arrived, and to commence suit for the recovery of the same. And, if any part of the said interest shall not be paid when the same becomes due, then the holder hereof may add the same to the principal sum, and it shall thereupon become a part of said principal, and bear monthly interest at the same rate ; and so on from month to month, adding all interest in arrear to such principal, and compounding interest on interest, at the same rate, and making monthly rests on that day of each month corresponding to the date of this obligation. And in case a cause of action shall accrue on this obligation, and the payee or the holder hereof shall commence a suit to enforce the same, then it shall be lawful for the said payee or for the holder hereof to have and demand upon the same, .... per cent. upon the amount then due, or which shall be recovered thereon, as a reasonable indemnity for the trouble, risk, delay and extraordinary expenses, of litigation, in addition to the taxed costs of suit.

[Signed]

.....

Now, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money secured to be paid by the said promissory note, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the en sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all those certain tracts of land, etc.

[here insert description fully], together with all and singular, the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof : and, also, all the estate, right, title, interest, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, of, in and to, the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above-granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever : *provided*, always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money secured to be paid by said promissory note, and the interest thereon, at the time and place, and in the manner mentioned in the promissory note, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. And the said party of the first part, for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said party of the second part, his heirs, executors, administrators and assigns, that he has not made, done, committed, executed or suffered, any act or acts, thing or things, whatsoever, whereby, or by means thereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered, in any way or manner whatsoever. And the said party of the first part, for himself, his heirs, executors and administrators, does covenant and agree to pay to the said party of the second part, his executors, administrators or assigns, the said sum of money and interest, as mentioned above, and secured to be paid as aforesaid. And if default shall be made in the payment of the said sum of money above-mentioned, or if the interest that may grow due thereon or any part thereof, shall be behind and unpaid for the space of . . . days after the same should have been paid according to the terms of said promissory note, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators and assigns, to consider the whole of said principal sum expressed in said note, as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived, and immediately to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same ; and in the meantime until such sale shall be made and become absolute, to enter into actual possession of the said mortgaged premises, applying to his own use the profits thereof, or to demand, collect and receive, from any tenant in possession the rents of said mortgaged premises from them respectively due and payable, to which effect the said rents are hereby assigned to the said party of the second part ; and to demand, collect and receive, the same as aforesaid, he is hereby constituted the true and lawful attorney in fact, irrevocable, of the said party of the first part, and out of the moneys arising from such sale, or rents and profits collected or received, if any, to retain

the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit; and also a percentage at the rate of .... per cent. upon the amount of judgment recovered, as an indemnity, as provided in said note, and also, the amount of all such payments of taxes, assessments or incumbrances, as may have been made by said party of the second part, his heirs, executors, administrators or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators or assigns. And it is hereby agreed, that it shall be lawful for the said party of the second part, his heirs, executors, administrators or assigns, to pay and discharge at maturity, all such taxes or assessments, liens, or other incumbrances now subsisting or hereinafter to be laid or imposed upon said land and premises above described, and which may be in effect a prior charge thereupon to these presents, and for such payments shall be allowed interest at the rate of .... per cent. per month, such payments and interest shall be considered as secured by these presents, and a charge upon the land and premises hereby conveyed or intended to be, and shall be repayable on demand, and may be deducted from the proceeds of the sale above authorized. And the said party of the first part further covenants and agrees to and with the said party of the second part, to pay all ordinary taxes which shall or may be imposed upon said land and premises, and upon this mortgage or the money hereby secured during its continuance, and in default thereof, the said party of the second part shall pay and discharge the same; and the sum so paid shall bear interest at the rate of .... per cent. per month, and shall be considered as secured by these presents, and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above-mentioned, with interest as herein provided; and upon all sums which shall become due or accrue to the said party of the second part, his heirs, executors, administrators or assigns, by virtue of any of the covenants or provisions herein contained, interest shall be chargeable at the same monthly rate as upon the said principal debt, up to the next monthly date corresponding to the date of the said promissory note or obligation, and then be added to the principal debt, and become a part thereof, and bear monthly interest at the same rate, and be compounded in the same manner, and subject to the recovery of the same percentage.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

..... [L.S.]

Signed, sealed and delivered, in presence of

.....

#### *Satisfaction of Mortgage.*

Know all men by these presents, that I, ....., resident of ....., do hereby certify and declare that a certain mortgage, bearing date the .... day of ....., 18.., made and executed by ....., the party of the first part therein, to ....., the party of the second part therein, upon a lot on

the corner of .... and .... streets, in said city, which mortgage is recorded in the office of the county recorder of the county of ...., in book .... of mortgages, on pages .... and ....., on the .... day of ....., 18.., is fully paid, satisfied and discharged.

In witness whereof, I have hereunto set my hand and seal, the .... day of ....., A.D. 18..

In presence of

.....

*Mortgage by Way of Indemnity.*

This indenture, made this .... day of ....., A.D. 18.., between ...., of the county of ...., state of ...., and ...., of the city of ...., state of ...., of the first part, and ...., of the said county of ...., state of ...., of the second part, witnesseth :

That the said .... and ...., parties of the first part, as collateral security to said .... for our full performance of the covenant of indemnification hereinafter expressed, and according to the condition of this deed, and in further consideration of the sum of .... to us paid by said ...., the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said ....., his heirs and assigns, forever, all our right, title and interest [being the one undivided half thereof], of, in and to, all those two certain lots, pieces or parcels, of land, situated, lying and being, in said county of ...., bounded and described as follows : [description of parcels], together with all and singular the tenements, hereditaments and appurtenances, thereunto respectively belonging, to have and to hold the same to the said ...., his heirs and assigns forever :

*Provided*, always, nevertheless, whereas the said ...., together with one ...., on the .... day of ....., A.D. 18.., did enter into and execute a certain stipulation in admiralty, in the suit of .... vs. the ship ...., and of other libelants against the same ship, in the district court of the United States, for the .... district of ...., the total penalty whereof is the sum of .... dollars, and the said ...., being bound in the sum or proportion of .... dollars, for the release from the custody of the United States marshal, of said ship ...., and her delivery to ...., the master and claimant thereof, conditioned that the said stipulators shall, at any time, upon the interlocutory and final order or decree of the said district court or of any appellate court to which the above-mentioned suits or any of them may proceed, and upon notice of such order or decree to said claimant or to : ...., his proctor, pay into court the full value of .... dollars (the agreed value of said ship), in the several amounts specified in said stipulation, and abide by and pay to the extent of said .... dollars, in the several amounts in said stipulation mentioned, the money awarded by any final decree rendered in said suits by said district court or the appellate court, if any appeal intervene :

Now these presents are on this condition, that if the said .... and ...., their heirs, executors or administrators, shall indemnify and save

harmless the said . . . . ., his heirs, executors or administrators, against said stipulation, and from all damages whatsoever that may happen or accrue to the said . . . . ., his heirs, executors or administrators, by reason of his having entered into and executed said stipulation, and of his or their being obliged by compulsion of law to pay, and in fact paying, any sum or sums of money by reason thereof, then this indenture and every thing herein contained, shall be wholly void, otherwise to remain in full force.

And the said . . . . . and . . . . ., for themselves, their heirs, executors and administrators, jointly, hereby covenant with the said . . . . ., his heirs, executors and administrators, that they the said . . . . . and . . . . . shall and will indemnify and save harmless the said . . . . ., his heirs, executors and administrators, against said stipulation, and from all damages whatsoever that may happen or accrue to the said . . . . ., his heirs, executors or administrators, by reason of his having entered into and executed said stipulation, and of his or their being obliged to pay, and in fact paying, any sum or sums of money by reason thereof.

And the said . . . . ., for himself, his heirs, executors, administrators and assigns, doth covenant, that whenever his liability or said stipulation shall cease and determine by a decree of the said district court in favor of the said claimant or in any other manner, the said . . . . ., his heirs, executors, administrators or assigns, shall and will deliver up this indenture to the said parties of the first part, to be canceled, or shall and will execute and deliver to them a good and valid release thereof.

In witness whereof, etc. [as in foregoing form].

#### *Release of Part of Mortgaged Premises.*

This indenture made this . . . . . day of . . . . ., 18.., between . . . . ., of the city of . . . . ., of the first part, and . . . . ., of the city of . . . . ., of the second part, witnesseth, that whereas the said party of the second part by his certain indenture of mortgage, bearing date the . . . . . day of . . . . ., 18.., and recorded in the county recorder's office of the county of . . . . ., in liber No. . . . . of mortgages, at page . . . . ., . . . . ., 18.., did, for the consideration and for the purpose therein mentioned, convey to the party hereto of the first part, certain lands in the county of . . . . ., of which the lands hereinafter described are part and parcel. And whereas the said party of the second part, hath, on the day of the date of these presents, paid to the said party of the first part, the sum of . . . . . hundred dollars part of the moneys secured by the mortgage aforesaid, as therein specified, on which payment the said party of the first part hath agreed to release to the said party of the second part, his heirs and assigns, the lands hereinafter described, and take and accept the residue of the said mortgaged premises as his security for the payment of the moneys remaining unpaid on the said mortgage.

Now, therefore, if the said . . . . ., party of the first part, in consideration of the premises and of the said sum of . . . . . dollars, so paid to me by said party of the second part, doth hereby grant, release, assign and make over, unto the said party of the second part, and to his heirs and assigns, all that portion of said mortgaged lands, bounded and described as follows, viz : [insert description], together with all and singular, the tene-

ments, hereditaments and appurtenances, thereunto belonging or in anywise appertaining.

To have and to hold the lands and premises hereby released and conveyed to the said party hereto of the second part, his heirs and assigns, to his and their only proper use and behoof forever, free, clear and discharged, of and from the lien of the said mortgage.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

Sealed and delivered, in presence of

..... [L.S.]

.....

*Agreement to Increase Rate of Interest and Pay Taxes on Mortgage.*

Know all men by these presents, that we, .... and ...., the obligors named in a certain bond, in the penal sum of .... dollars, bearing date the .... day of ....., A.D. 18.., conditioned for the payment of the sum of .... dollars, with interest at the rate of .... per cent. per month, to ...., the obligee therein named, which bond is secured by the mortgage of the said ...., bearing even date therewith, and recorded in the office of the county recorder of the county of ....., in liber No. .... of mortgages, at page ....., on the .... day of ....., A.D. 18.., and which said bond and mortgage are now wholly due and payable, do hereby, for ourselves, heirs, executors, administrators and assigns, in consideration of the sum of ... dollars, .... money to us in hand paid by the said ...., the receipt whereof is hereby acknowledged, covenant, grant, promise and agree, to and with the said ...., his executors, administrators and assigns, that the said principal sum of .... dollars shall, from and after the date of these presents, bear interest at the rate of .... per cent. per month, and that we will pay such interest at the times and in the manner in said bond and mortgage provided, and, further, that we will pay and discharge at maturity all taxes and assessments which are or may be imposed upon the said bond and mortgage, or upon the moneys thereby secured, until the said bond and mortgage shall be fully paid and satisfied, and, in case of our default in making such payment, that it shall be lawful for the said ...., his executors, administrators or assigns, to pay and discharge the same, and such payment, when made, shall be taken and deemed to be a charge upon the lands and premises in said mortgage described, shall be added to the principal moneys thereby secured, and shall bear interest thereafter at the same rate. And I, the said ...., for the consideration aforesaid, do hereby grant and convey unto the said ...., his heirs and assigns, the lands in said mortgage described, as security for the performance of this agreement, subject to the proviso in the said mortgage contained.

In witness whereof, we have hereunto set our respective hands and seals this .... day of ....., A.D. 18..

..... [L.S.]

..... [L.S.]

Sealed and delivered in presence of

.....

*Agreement to Extend the Time for Payment of Mortgage.*

This agreement, made this .... day of ....., A.D. 18..., between ....., of the county of ....., administrator, etc., of the first part, and ..... and ..... of the same place, of the second part, witnesseth, whereas, the said party of the first part is the holder of a certain promissory note made by ..... and ....., under their firm name of .... & ....., for the sum of .... dollars, dated the .... day of .... A.D. 18..., and payable ..... after the date thereof, with interest thereon at the rate of .... per cent. a month, monthly in advance, with a provision that, in case of default in the payment of any installment of said interest for the space of .... days after the same shall become payable, it should be optional with the said party of the first part to consider said principal sum and all arrearages of interest thereon immediately due and payable.

And, whereas, the said party of the first part holds a certain mortgage made by the said ..... and ....., dated ..... th, A.D. 18..., and recorded in the county recorder's office of ..... county, in liber No. .... of mortgages, at page ....., ..... th, A.D. 18..., as security for the payment of said note and interest, under the terms of a certain agreement bearing date on the said .... day of ....., 18..., and duly recorded in said office, in liber No. .... of covenants, at page ....., ..... th, 18... And, whereas, the said note has, by the terms thereof, become due and payable, and the said parties of the second part have applied to said party of the first part to extend the time of the payment thereof .... months from the date of these presents, and he has consented to do so upon the same terms and conditions as originally provided therein.

It is further mutually agreed between said parties, that recourse shall not be had to said mortgage until said period of .... months shall have expired, unless, in case of default in the payment of the interest on said note, the said party of the first part shall have sooner elected to consider said note and mortgage as due and payable.

In witness whereof, the respective parties to these presents have hereunto, and to a duplicate hereof, interchangeably set their hands and seals the day and year first above written.

..... [L.S.]  
 ..... [L.S.]  
 ..... [L.S.]

Sealed and delivered in presence of

.....

*Assignment of Lease by way of Mortgage.*

This indenture, made and entered into this .... day of ....., A.D. 18... between ..... of the county of ....., of the first part, and ..... of the same place, of the second part.

Whereas, ..... and ..... did, by a certain indenture of lease, bearing date the ..... day of ....., A.D. 18..., and to be recorded in the county recorder's office of ....., simultaneously herewith demise, lease and to farm let, unto the said party hereto of the first part,



and to his executors, administrators and assigns, all and singular the premises hereinafter mentioned and described, together with the appurtenances for and during and until the full end and term of .... years from the .... day of ....., in the year 18.., and fully to be complete and ended with certain privileges of renewal therein contained, yielding and paying therefor to the said ..... and ..... , and to their executors and assigns, the monthly rent or sum of .... dollars; and, whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of .... dollars, .... money, secured to be paid by his certain promissory note, bearing even date with these presents, of which the following is a copy, viz :

\$.....

....., ..... , 18..

..... after date, for value received, I promise to pay to the order of ..... , .... dollars, with interest thereon, at the rate of .... per cent. per ....., payable ....., in advance. If any installment shall become due and be unpaid for the space of .... days, then, and from thenceforth, the interest on the said sum of .... dollars is to be compounded .... If any installment of said interest shall become due before the maturity of said note, and be unpaid for the space of .... days, then it shall be optional with the payee or his assigns, to consider this note as immediately due, and payable with compound interest as aforesaid.

[Indorsed] ..... [Signed] ..... , as, by the said promissory note, reference being thereto had, may more fully appear.

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money secured to be paid by the said promissory note, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensembling and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, unto the said party of the second part and to his heirs and assigns forever, all that certain lot, piece or parcel, of land situate, lying and being, in the city and county of ...., bounded and described as follows, viz : [here insert description], together with the buildings thereon known as "the ....," with the appurtenances thereof, and all the machinery, scenery, fixtures, furniture, properties, wardrobe and decorations, belonging and appertaining thereto, with all and singular, the rights and privileges thereunto belonging or in anywise appertaining, and also all the estate, right, title, interest, term and terms of years yet to come and unexpired, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, in and to the said demised premises, and of, in and to, the building or buildings erected thereon, and every part and parcel thereof with the appurtenances, and also the said indenture of lease, and every clause, article, privilege, condition and covenant, therein contained. To have and to hold the said indenture of lease and other hereby granted premises, unto the said party of the second part, his executors, administrators and assigns, to his and their only proper use, benefit and be-

hoof, for and during all the rest, residue and remainder, of the said term and terms of years yet to come and unexpired, subject, nevertheless, to the rents, covenants, provisions and conditions, in the indenture of lease mentioned *provided*, always, and these presents are upon this express condition, that if the said party of the first part, his executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators and assigns, the said sum of money secured to be paid by the said promissory note and the interest thereon, at the time and in the manner mentioned in the said promissory note, according to the true intent and meaning thereof, and also pay the other moneys hereinafter agreed to be paid as herein provided, that then these presents and the estate hereby granted shall cease, determine and be utterly void. And the said party of the first part, for himself, his heirs, executors and administrators, doth covenant and agree to pay unto the said party of the second part, his executors, administrators or assigns, the said sums of money and interest as mentioned above, and secured to be paid as aforesaid, and also to pay the said monthly rent so reserved and agreed to be paid on said indenture of lease as aforesaid. And if default shall be made in the payment of the said sum of money above-mentioned, or in the interest that may grow due thereon or in any part thereof, or in the said monthly rent so reserved and agreed to be paid in and by said indenture of lease as aforesaid, that then, and from thenceforth, it shall be lawful for the said party of the second part, his executors, administrators and assigns, and he and they are hereby empowered and authorized to consider the whole amount of said promissory note as immediately due and payable, and to enter into and take possession of, all and singular, the said demised premises, and to let or underlet the same, and to collect the rents due or to become due therefor, and apply the moneys thus received toward the payment of the said monthly rent agreed to be paid in and by said indenture of lease, and the balance toward the payment of the interest due and to become due upon said promissory note, and the balance thereof toward the principal of said promissory note until the same is fully paid, or to sell, transfer and set over, all the rest, residue and remainder, of the term and terms of years then yet to come and unexpired of the said indenture of lease, and all the other the right, title and interest, of the said party of the first part, his heirs, executors, administrators or assigns, of, in and to, the same, and the hereby assigned premises, at public auction, according to law and under the direction of some court of competent jurisdiction. And as the attorney of the said party of the first part for that purpose by these presents, duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient assignment or transfer in the law for the same, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of advertisement and sale of the same premises and of suit for foreclosure, including counsel fees, at the rate of . . . . per cent. upon the amount which may be found to be due for principal and interest by the said decree, and also the amount of all such payment of taxes, assessments, rents or incumbrances, as may have been made by said party of the second part, his heirs,

executors, administrators or assigns, by reason of the permission hereinafter given; with the interest on the same hereinafter allowed, rendering the overplus of the purchase money, if any there shall be, unto the said party of the first part, his heirs, executors, administrators or assigns, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from or under, him, them or either of them. And it is hereby agreed that it shall be lawful for the said party of the second part, his heirs, executors, administrators or assigns, to pay and discharge at maturity all such taxes, rents or assessments, liens or other incumbrances, now subsisting or hereafter to be laid or imposed upon said demised premises, and which may be in effect a prior charge thereupon to these presents, including all rents and other charges reserved in said indenture of lease, and for such payments shall be allowed interest at the rate of .... per cent. per .... Such payment and interest shall be considered as secured by these presents, and a charge upon said lots of land, lease and premises, shall be repayable on demand, and may be deducted from the proceeds of the sale above authorized. And the said party of the first part, for himself, his executors and administrators, doth hereby covenant and agree that he and they shall and will insure and keep the buildings erected and to be erected upon the said demised premises insured against loss by fire until each promissory note shall be fully paid, in a sum not less than .... thousand dollars, in some one or more insurance companies in good standing, to be approved by the party hereto of the second part, and assign the policy and certificates thereof to the said party of the second part, his executors, administrators and assigns; and in default thereof it shall be lawful for the said party of the second part, his executors, administrators and assigns, to effect such insurance for periods of not less than .... months, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises added to the amount of said promissory note, and bear interest at the rate of .... per cent. per month, and be secured by these presents and be repayable on demand. And the said party of the first part, for himself, his executors and administrators, doth hereby covenant to and with the said party of the second part, his executors, administrators and assigns, that the said premises hereby granted are free and clear of and from all incumbrance of every name and nature whatever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, at the city of ....., the day and year first above written.

..... [L.S.]

Sealed and delivered in presence of

.....

## MUTINY.

**Mutiny.**—The unlawful resistance of a superior officer, or the raising of commotions and disturbances on board of

a ship against the authority of its commander, or in the army in opposition to the authority of the officers.

**By the Act of Congress** establishing rules and articles for the government of the armies of the United States, it is enacted as follows: "Any officer or soldier who shall begin, excite or cause or join in, any mutiny or sedition in any troop or company in the service of the United States, or in any party, post, detachment or guard, shall suffer death or such other punishment as shall by a court-martial be inflicted. Any officer, non-commissioned officer or soldier, who being present at any mutiny or sedition, does not use his utmost endeavors to suppress the same, or coming to the knowledge of any intended mutiny, does not without delay give information thereof to his commanding officer, shall be punished by the sentence of a court-martial, with death or otherwise, according to the nature of his offense."

**By the Act** for the government of the navy it is enacted as follows: "If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by a court-martial, suffer death; and if any person as aforesaid shall utter any seditious or mutinous words, or shall conceal or connive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office or being witness to any mutiny or sedition, shall not do his utmost to suppress it, he shall be punished at the discretion of a court-martial."

**Mutiny**, revolt and the endeavor to make a revolt and mutiny, on board merchant vessels, are made criminal, and punishable by law by imprisonment.

## NATURALIZATION.

**Naturalization.**—The act by which an alien is made a citizen of the United States.

**Who may be Naturalized.**—Any free white person\* of good moral character,† a citizen of a foreign country, may become a citizen of the United States of America, but before becoming a citizen he must make a declaration under oath, at least two years before his admission to citizenship, of his intention to become a citizen. He must declare under oath that it is his *bona fide* intention to become a citizen and renounce forever all allegiance and fidelity to all and any foreign prince, potentate, state and sovereign whatever, and particularly to the foreign prince, etc., under whose jurisdiction he was born. This declaration must be made before :

- 1st. Any state court, being a court of record, and having a seal and clerk and common-law jurisdiction.
- 2d. Before a circuit court of the United States.
- 3d. Before a district court of the United States.
- 4th. Before a clerk of either of these courts.

**At what Time admitted to Citizenship.**—After such person has been a resident of the United States five years, provided, he has made his declaration to become a citizen at least three years previously, he may be admitted to the privileges of a citizen. Before he can be admitted he must prove by the oaths of two citizens that he has been a resident of the United States for five years and one year in the state where the court is held, and that his moral character is good, and that it has been his intention to become a citizen. He must take an oath to support the constitution of the United States and to renounce and abjure his native allegiance.

**If he have been a Minor,** and shall have resided in the United States for three years next before his attaining his majority, he may be admitted without such declaration, on

\* By virtue of a late act of congress, negroes may be naturalized—being preferred by congress to other dark-skinned people. By striking the word "white" out of the naturalization laws, *Chinese* and all other foreigners may have conferred on them the "inestimable rights" of American citizenship.

† The courts are very particular in this respect, refusing every petition when the applicant's moral character is not absolutely irreproachable.

proving by two witnesses that he has resided five years in the United States, three years as a minor and two since he became of age, making the declaration of his intention at the time of his admission, and declaring on oath and proving to the satisfaction of the court that for three years next preceding, it had been his *bona fide* intention to become a citizen

**The Alien's Country** must, at the time of his admission, be at peace with the United States.

**Should an Alien Die** after having declared his intention, his widow and children may become citizens by taking the oath which the alien himself would have taken.

**The Children** of duly naturalized persons, if minors at the time of naturalization and residing in the United States, shall be deemed citizens, without taking out papers to that effect.

#### FORMS.

##### *Declaration of Intention.*

I, . . . . ., do declare, on oath, that it is *bona fide* my intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to all and any foreign prince, potentate, state and sovereignty, whatever, and particularly to . . . . . of the . . . . .

Sworn in open court, this . . . . day of . . . ., 18..

I, . . . . ., clerk of the . . . . court of . . . ., do certify that the above is a true copy of the original declaration of intention of . . . . . to become a citizen of the United States, remaining of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, the . . . . day of . . . ., one thousand eight hundred and . . . .

[L.S.]

##### *Oath of Alien.*

State of . . . . ., }  
county of . . . . ., } ss.

. . . . ., being duly sworn, doth depose and say, that he is a resident in the state of . . . ., and intends always to reside in the United States, and to become a citizen thereof as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require, to enable him to obtain naturalization.

Sworn to before me, the . . . . day of . . . ., 18..

.....  
Clerk of the . . . . . court

*Certificate of Citizenship.*

Be it remembered, that on the .... day of ....., in the year of our Lord one thousand eight hundred and ....., late of ....., at present of the county of ....., in the state of ....., appeared in the ..... court of ..... [the said court being a court of record, having common-law jurisdiction and a clerk and seal], and applied to the said court to be admitted to become a citizen of the United States of America, pursuant to the directions of the act of congress of the United States of America entitled "An act to establish a uniform rule of naturalization and to repeal the acts heretofore passed on that subject;" and also to an act entitled "An act in addition to an act entitled 'An act to establish a uniform rule of naturalization and to repeal the acts heretofore passed on that subject;'" and also to the "Act relative to evidence in cases of naturalization," passed March 22d, 1816; and also to an act entitled "An act in further addition to 'An act to establish a uniform rule of naturalization and to repeal the acts heretofore passed on that subject,'" passed May 26th, 1824. And the said ...., having thereupon produced to the court such evidence, made such declaration and renunciation, and taken such oath, as are by the said acts required :

Thereupon it was ordered by the said court that the said .... be admitted, and he was accordingly admitted by the said court, to be a citizen of the United States of America.

In testimony whereof, the seal of the said court is hereunto affixed this .... day of ....., in the year one thousand eight hundred and ....., and in the .... year of our independence.

*Per curiam,*

[L.S.]

....., Clerk.

*Affidavit of Alien under Eighteen Years of Age at the Time of his Arrival.*

State of ..... }  
county of ..... } ss.

In the matter of ...., on his naturalization.

....., being duly sworn, says : That, for the continued term of five years last past he has resided within the United States, without being at any time during the said five years out of the territory of the United States, and that for one year last past he has resided within the state of .....; and that at the time he so arrived in the United States he had not attained his eighteenth year.

Sworn in open court, this .... day of ....., 18.., before me,

.....,  
Clerk of the ..... court of the ..... district of .....

*Entry of Order on Minutes of Court Admitting to Citizenship.*

..... court.

In the matter of the application of .... to become a citizen.

In open court appeared ...., with his witnesses, .... and ....

...., an applicant to be admitted a citizen of the United States, in pursuance of the statute in reference thereto made and provided, and said applicant having produced such evidence, made such declarations and renunciations, and taken such oaths, as by the said act of congress are required :

It is ordered that said applicant be and he is hereby admitted to become a citizen of the United States of America.

## NECESSARIES. ,

**Necessaries.**—The term “necessaries” is not confined merely to what is requisite barely to support life, but includes many of the conveniences of refined society. Its meaning depends somewhat on the station in life of the party supplied with or claiming necessaries.

**Infants** may contract for necessaries, but are not liable for borrowed money, though expended for necessaries. See **MINORS**.

**A Wife** is allowed to make contracts for necessaries and her husband is generally responsible for them. If he give notice not to trust her, still he will be liable for all such necessaries that she stood in need of ; but, in this case, the creditor must show that she did stand in need of the article furnished.

**Neglect** on the part of the husband to supply his wife with the common necessaries of life for two years—if, indeed, which is not probable, the wife lives that length of time—is a ground of divorce in many states. See **DIVORCE**.

## NEGLIGENCE.

**Negligence.**—Want of due diligence in the use of property and proper care in the preservation thereof.

**Use of Property.**—It is a rule of law that every person must use his own property so as not to injure or destroy that of his neighbor ; and it is now settled that the owner of premises adjoining those pulled down must shore up his own on the inside, and do everything proper to be done upon them for their preservation. But in an action for an injury to the plaintiff's premises, in consequence of the



pulling down of the defendant's house adjoining, the plaintiff may recover damages for any injury actually caused by the *negligence* of the defendant, although he has not himself used those precautions which it was his duty to adopt against such injury.

**An Action lies against a party who by carelessness or negligence in excavating his own ground, either causes or accelerates the fall of an adjoining house.**

**A Person** who has a flap-door in the foot of the pavement of the street, opening into a cellar underneath his house, is bound, when he uses it, to conduct his business with such a degree of care as will prevent a reasonable person, acting himself with an ordinary degree of care, from receiving any injury by it.

**Duty of Tenant.**—It is universally the duty of the occupier of a house having an area fronting a public street, to so fence it as to make it safe to passengers; and it is no defense to an action against him for neglecting so to do, whereby the plaintiff fell down into the area and was hurt, that when he took possession of the house, and as long back as could be remembered, the area was in the same open state as when the accident happened. If the owner of a house is bound to repair it, he, and *not* the occupier, is liable to an action on the case for an injury sustained by a stranger from the want of repair.

**The Care to Observe.**—Where notice had been given to the occupier of adjoining premises of an intention to pull down and remove the foundations of a building, or part of the footing of one of the walls on which one of the walls of such adjoining premises rested, it was held that the party giving notice was only bound to use *reasonable* and *ordinary* care in the work, and was not bound in any other way to secure the adjoining premises from injury, although from the peculiar nature of the soil he was compelled to lay the foundations of his new building several feet deeper than that of the old. But if the adjoining house was an *ancient* one or had been erected for a long period of time, then it would have a right to the support of such wall and an ac-

tion would lie for its removal. An action lies against a party for so negligently constructing and keeping a hay-rick on the extremity of his land, that in consequence of its spontaneous ignition his neighbor's house is burnt down.

### NEGOTIABLE.

**Negotiable.**—A term applied to a contract, the right of action of which is capable of being transferred by indorsement. A negotiable note or bill is one payable to a person or *order*.

**By Statute**, in the states of the Pacific, every instrument in writing whereby a person agrees to sell, deliver or pay, any article of personal property, is negotiable. See **BILLS** and **NOTES**.

### NEW FOR OLD.

**New for Old.**—A term used in the law of insurance in cases of adjustment of a loss where it has been but partial. In making such adjustment, the rule is to apply the old materials toward the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third *new for old* upon the balance.

### NEW PROMISE.

**New Promise.**—A contract made after the original promise has for some cause been rendered invalid, by which the promiser agrees to fulfill such original promise.

**When a Debt** is barred by the statute of limitation a promise to pay will be binding, and the statute cannot be pleaded as a bar to the action : *provided*, the new promise is in *writing*, signed by the party to be charged thereby. See **LIMITATIONS**.

### NEW TRIAL.

**New Trial.**—A rehearing of the legal rights of the parties upon disputed facts, before another jury or the same

court when a jury has been waived, granted by the court on motion of the party dissatisfied with the result of the previous trial, upon a proper case being presented for the purpose.

**The Statutory Provisions of California, Nevada and Idaho, are as follows :**

**When a New Trial may be Granted.**—The former verdict or other decision may be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of said party :

1st. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion, by which either party was prevented from having a fair trial.

2d. *Misconduct of the Jury.*—And whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavits of any one or more of the jurors. [Only applicable to California and Idaho.]

3d. Accident or surprise, which ordinary prudence could not have guarded against.

4th. Newly-discovered evidence, material for the party making the application, which could not, with reasonable diligence, have been discovered and produced at the trial.

5th. Excessive damages, appearing to have been given under the influence of passion or prejudice.

6th. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7th. Error in law, occurring at the trial and excepted to by the party making the application.

## NEXT OF KIN.

**Next of Kin.**—This term is used to signify the relations of a party who has died intestate.

**A Wife** cannot in general claim as next of kin of her husband, nor a husband as next of kin of his wife. See DESCENT.

### NOLLE PROSEQUI.

**Nolle Prosequi.**—An entry made on the record, by which the prosecutor or plaintiff declares that he will proceed no further.

The **Effect** of a *nolle prosequi*, when obtained, is to discharge the defendant; but it does not operate as an acquittal, for he may be afterwards reindicted for the same offense.

### NOMINAL DAMAGES.

**Nominal Damages.**—A trifling sum awarded when a breach of duty or an infraction of the plaintiff's right is shown, but no serious loss or injury is proved to have been sustained, as in an action of trespass, where the defendant is proved to have invaded the premises of plaintiff and gathered an apple or appropriated an article of trifling value, the jury will allow nominal damages, as one dollar or one cent.

### NONSUIT.

**Nonsuit.**—The name of a judgment given against the plaintiff when he is unable to prove his case, or when he refuses or neglects to proceed to the trial of a cause after it has been put at issue, without determining such issue.

In the **Action of Replevin**, and where the goods came into the defendant's possession without wrong on his part, it is necessary to prove a demand on him for the goods before action; and should the plaintiff fail to prove such demand at the trial, the court will enter a "nonsuit" and dismiss the action because such demand was not proved.

**A Nonsuit** is no bar to another action for the same cause.

### NOTARY PUBLIC.

**Notary Public.**—An officer appointed by the executive or other appointing power under the laws of different states.

**Demand, Protest and notices of dishonor of commercial paper.** See PROTEST.

**Statutory Provisions.**—In California, Nevada and Idaho, the governor is authorized to appoint a certain number of notaries for each of the respective counties, to hold office for two years, and until their successors are appointed and qualified.

**Seal to be Provided.**—He is also required to provide a notarial seal, with a device of the coat of arms of the state and the name of his county, with which to authenticate all his official acts. The statute provides, however, that all officers authorized to administer oaths and affirmations, may certify the same under their hands, without affixing their seals.

**Demand and Acceptance.**—Notaries public shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same for non-acceptance and non-payment, and to exercise such other powers and duties, as by the law of nations and according to commercial usages, or by the law of any other state, government or country, may be performed by notaries public.

**They may also Demand acceptance of inland bills of exchange and payment thereof and of promissory notes, and may protest the same for non-acceptance or non-payment, as the case may require.**

**To take Acknowledgments.**—Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing executed by any married woman, to take depositions and to administer oaths and affirmations in all matters, incident or belonging to duties of his office, and to take affidavits to be used before any court, judge or officer, of this state.

**To keep Record.**—He is required to keep a fair record of his official acts, except those mentioned in a preceding

section, and to give, when required, a certified copy of any record or paper in his office, whether his own or those of any predecessor, to any person, upon payment of the fees thereof.

**Disposition of Record.**—Upon expiration of his office, he must deliver his record and public papers to his successor. If he die, resign, be disqualified or remove from the county, they must be delivered within thirty days to the recorder of the county, who must deliver them to the successor of such notary, when qualified. [In Idaho, no time is set in which to deliver his seal and papers to the recorder.]

**Exempt from Execution.**—His seal, registers and official documents, are exempt from execution; and, in case of his death or removal, his register and official documents must be lodged in the office of the county recorder for the use of his successor.

**Misconduct or Neglect.**—For any misconduct or neglect of duty in any of the cases in which any notary public appointed under the authority of this state is authorized to act, either by the law of this state or of any other state, government or country, or by the law of nations or by commercial usage, he shall be liable on his official bond to the parties injured thereby, for all damages sustained. For any willful violation or neglect of duty, any notary public shall be subject to criminal prosecution, and may be punished by fine not exceeding two thousand dollars and removal from office.

**Certificate as Proof.**—Any certificate or instrument, either printed or written, purporting to be the official act of a notary public of this state, and purporting to be under the seal and signature of such notary public, shall be received as *prima facie* evidence of the official character of such instrument and of the truth of the facts therein set forth.

**Notice of Protest as Evidence.**—The original protest of a notary public, under his hand and official seal, of any bill of exchange or promissory note for non-acceptance or non-payment, stating the presentment by him of such bill

of exchange or note for acceptance or payment, and the non-acceptance or non-payment thereof, and the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, shall be *prima facie* evidence of the facts contained therein. The certificate of a notary public drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts in like manner as the original protest.

**Powers under Laws of the United States.**—By act of congress, September 16th, 1850, it is enacted that, in all cases in which, under the laws of the United States, oaths or affirmations or acknowledgments, may now be taken or made before any justice or justices of the peace of any state or territory, such oaths, affirmations or acknowledgments, may be hereafter also taken or made by or before any notary public duly appointed in any state or territory, and, when certified under the hand and official seal of such notary, shall have the same force and effect as if taken or made by or before such justice or justices of the peace. And all laws and parts of laws for punishing perjury or subornation of perjury, committed in any such oaths or affirmations, when taken or made before any such justice of the peace, shall apply to any such offense committed in any oaths or affirmations which may be taken under this act before a notary public or commissioner, as hereinafter named: *provided*, always, that on any trial for either of these offenses the seal and the signature of the notary shall not be deemed sufficient in themselves to establish the official character of such notary, but the same shall be shown by other and proper evidence.

#### OREGON.

**Appointment of Notaries.**—In Oregon, notaries are appointed, one or more for each county, by the governor, for

two years, unless sooner removed by the governor, and have power to act, by virtue of their office, throughout the state.

**Oath and Bond.**—The notary must take the oath, give bond in five hundred dollars, and deposit an impression of his seal, together with his oath and bond, in the office of the secretary of state.

**Powers of.**—He has full power and authority to acknowledge and administer oaths and to make protests, attestations and other instruments of publication.

**Duty of.**—It is his duty to protest bills, notes and other instruments, and give immediate notice to every maker, surety and indorser. He must serve the notice upon the person or persons protested against, provided he or they reside within two miles of the residence of the notary; if more than two miles, the notice may be forwarded by mail or other safe conveyance.

**Must keep Record of Acts.**—He must keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested, which record shall at all times be competent evidence to prove such notices in any trial before any court in the state where proof of such notice may become requisite.

**Duty upon Vacating His Office.**—Upon vacating his office, all his records and papers must be deposited with the clerk of the district court of his county, and, on his neglect or that of his representative in case of his death, to so deposit his records and papers, for three months, the delinquent is liable to a fine of from fifty to five hundred dollars. If any person knowingly destroy, deface or conceal, any records or papers of a notary, he is liable to the like fine, and damages to the party injured.

**Duty of County Clerk.**—It is the duty of such clerk to safely keep such papers and records, and he has full au-



thority to give attested copies of the same while in his possession.

#### WASHINGTON.

**Appointment of Notaries.**—There shall be as many notaries public biennially appointed by the governor for the several counties as he shall deem expedient, and they shall be severally commissioned and engaged according to law.

**Authority of Notary.**—Notaries public are hereby authorized, within their respective counties, to act, transact, do and furnish, all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths.

**Vacancy in Office of.**—On the death, resignation or removal from office, of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the district court for the county in which the said notary public resided.

**Penalty for Neglect to Deposit Record.**—If any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

**Seal of Notary.**—Every notary public, before he enters upon the duties of his office, shall provide a seal and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the territory.

#### FORMS.

##### *Notary's Bond.*

Know all men by these presents, that we, . . . . ., as principal, and . . . . ., . . . . . and . . . . ., as sureties, all of the . . . . . of . . . . ., state of . . . . ., the said . . . . . in the sum of . . . . . dollars, and the said sureties in the following-named sums, viz: . . . . . for . . . . . dollars, and . . . . . and . . . . . for the sum of . . . . . dollars each, making, in the aggregate, the whole penal sum of . . . . . dollars, lawful money of the United States, to

be paid to the said state of . . . ., for which payment well and truly to be made we bind ourselves, our heirs and administrators, firmly by these presents. Sealed with our seals, and dated this . . . . day of . . . ., A.D. 18..

The condition of the above obligation is such that, whereas, . . . . ., governor of . . . ., has commissioned the above-bounden . . . . ., a notary public in and for the county of . . . ., by commission dated the . . . . day of . . . ., A.D. 18.. Now, therefore, if the said . . . . . shall well and truly perform the duties of a notary public, as aforesaid, during his incumbency of said office under and by virtue of the commission aforesaid, according to law, and shall faithfully discharge all duties which may be required of him by any law enacted subsequently to the execution of this bond, then this obligation shall become void ; otherwise, to remain in full force and effect.

Witness our hands and seals, this . . . . day of . . . ., 18..

[Signed]

..... [L.S.]

..... [L.S.]

..... [L.S.]

..... [L.S.]

*Justification upon above Bond.*

State of . . . . ., }  
county of . . . . . } ss.

. . . . . and . . . . ., sureties in the foregoing bond, being separately and duly sworn, each says for himself that he is a resident and freeholder within the state and county aforesaid, and that he is worth double the sum for which he becomes liable as surety on the foregoing bond, over and above all his debts and liabilities, in unincumbered property situated within this state, which may be levied upon and is not exempt from execution and forced sale.

[Signed]

.....  
.....  
.....

Subscribed and sworn to before me, this . . . . day of . . . . 18..

.....  
Notary public.

*Indorsement of County Clerk on the same Bond.*

[Indorsed] Filed . . . ., 18..

.....  
County clerk.  
By . . . . ., Deputy.

Recorded . . . ., 18.., in record of official bonds, liber . . . ., page....

.....  
County clerk.  
By . . . . ., Deputy.

*Certificate of Approval of County Judge, to be Indorsed upon the Bond.*

County of . . . . ., ss.

I, . . . . ., county judge of said county, do hereby approve of the sub-

ficiency of the within bond and of the sureties thereto; and I hereby certify that .... within named, this day took and subscribed the oath of office as notary public, indorsed upon his commission before me, in words and figures following, viz:

State of ..... }  
county of ..... } ss.

I, ...., of the county aforesaid, do solemnly swear that I will support the constitution of the United States and of the state of ...., and that I will faithfully discharge the duties of the office of notary public in and for said county, according to the best of my ability.

[Signed] .....

Sworn and subscribed before me, this .... day of ...., A.D. 18..

[Signed] .....  
County judge.

*General Form of Notary's Certificate.*

United States of America, }  
State of ....., county of ..... } ss.

I, ...., a notary public in and for the county of ...., state aforesaid, duly commissioned, sworn and qualified, dwelling in the county of ...., do hereby certify that [here state the matter certified].

In witness whereof, I have hereto set my hand and affixed my notarial seal, this .... day of ...., A.D. 18..

.....  
Notary public.

*Protest for Non-acceptance.*

United States of America, }  
State of ....., county of ..... } ss.

On the .... day of ...., 18.., I, ...., a notary public in and for said county, duly commissioned and sworn, dwelling in the .... of ...., at the request of .... [insert name of the holder or indorser or indorsee], did present the original bill of exchange, hereto annexed, to ...., the drawee therein named, for acceptance, who refused to accept the same: whereupon I, the said notary, at the request aforesaid did protest, and by these presents do publicly and solemnly protest, as well against the drawee [add "and indorsers," if necessary] of said bill, as against all others whom it doth concern, for exchange, re-exchange and all costs, damages and interest, already incurred and to be hereafter incurred for want of acceptance of the same.

Thus done and protested, in the county of ...., the day and year first above written.

[L.S.] .....  
Notary public.

*Protest of Bill or Note for Non-payment, with Certificate of Service of Notice.*

United States of America, }  
State of ....., county of ..... } ss.

On the .... day of ...., 18.., at the request of ..... [insert the

name of the holder, indorser, indorsee or banker], I, ....., a notary public, duly commissioned and sworn, dwelling in the county of ....., in the state aforesaid, did present the original bill of exchange [or "note"], hereunto annexed, to ....., the acceptor [or, "maker"] of the said bill [or, "note"], and demanded payment, who refused to pay the same; [or, "did present the original note or check"] hereunto annexed, at the banking-house of ....., where the same is made payable [or, "at the place of business of ....., the acceptor or maker"] of the said bill [or, "note"], he being absent therefrom [or, "at the dwelling-house of ....., etc., his place of business being closed, and he being absent from his said dwelling-house"], and demanded payment of the same, which was refused [or, "did make diligent inquiry for the said ....., at his place of business or dwelling-house"] in the said county of ....., where the said bill [or, "note"] was made payable [or, "purported to be drawn"] but was unable to find the said ....., or his place of business or dwelling-house in said county, in order to demand payment of the said bill [or, "note"]: Whereupon I, the said notary public, at the request aforesaid did protest, and by these presents do solemnly and publicly protest, as well against the drawer and indorsers of the said bill [or, "note" or, "check"], as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages and interest, already incurred and to be hereafter incurred for want of payment of the same.

Thus done and protested in the city and county aforesaid.

And I do hereby certify, that on the .... day of ....., 18.., written notice of such demand, non-payment and protest, of the above-mentioned bill of exchange [or, "note"] was served by me upon ....., the drawer of said bill, [or, "... and ....., the several indorsers of the said note"] personally: [or, "by letters respectively addressed to them at their reputed places of residence, and the post-offices nearest thereto, and deposited in the post-office in the county of ...."].

Witness my hand and notarial seal, this .... day of ....., 18..

[L.S.]

.....

Notary public.

#### *Notice of Protest for Non-payment.*

Sir: Take notice, that your bill for .... dollars, at .... days from sight, dated ....., 18.., drawn on and accepted by ....., has this day been protested for non-payment: [or, "that the bill of .... for .... dollars, at .... days from sight, dated ....., 18.., indorsed by you" or, "by ....., etc., and drawn on and accepted by ....., has," etc., as above; or, "that the note of .... for .... dollars, dated ...., 18.., payable at the .... of .... and Co., .... days after date, and indorsed by .... and ....., has," etc. as above]. Dated ....., ....., 18..

Your ob't servant,

.....

Notary public.

To .....

*Notice of Protest for Non-acceptance.*

Sir: Take notice, that your bill for ..... dollars, at ..... days from sight, dated ..... 18.., drawn on ....., has this day been protested for non-acceptance. Dated ....., .... county, ..... 18..

Yours, etc.,

.....,

Notary public.

To ..... ..

*Certificate of Notary's Protest.*

United States of America, } ss.  
State of ....., county of .....

On the .... day of ....., A.D. 18.., before me, ..... a notary public, duly commissioned for the county aforesaid, personally appeared ..... master of the bark ....., of ....., who sailed from ....., in and with said bark ....., on the .... day of ....., A.D. 18.., with a cargo of assorted articles, bound for the port of ....., and arrived at the port of .... on the .... day of ....., 18.., having experienced heavy weather on the passage, and fearing damage, notes his protest to be extended, if need be.

Given under my hand and seal, in the county of ....., the day and year first above-written.

.....,

Notary public.

*Marine Protest.*

United States of America, } ss.  
State of ....., and county of .....

To all people to whom these presents shall come or may concern, I, ..... a public notary, in and for the county aforesaid, by letters patent under the great seal of the said state, duly commissioned and sworn, dwelling in the county of ....., send greeting:

Know ye, that on the .... day of ....., in the year of our Lord one thousand eight hundred and ....., before me appeared ..... master of the ship called the ....., and noted in due form of law with me, the said ..... notary, his protest, for the uses and purposes hereinafter mentioned; and now, at this day, to wit: the day of the date hereof, before me, the said notary, at the county aforesaid, again comes the said .... and requires me to extend his protest, and together with the said ....., also come ..... and ..... seamen, belonging to the aforesaid ship, all of whom being by me duly sworn on the holy evangelists of the almighty God, voluntarily, freely and solemnly, do declare, and depose as follows, that is to say, that he, the said ....., set sail and departed in and with the said ship .... as master thereof, from ....., having on board the said ship a cargo of .... and ....., and bound for the port of ....., that the said ship was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualled, apparelled and appointed; and was in every respect fit for sea and the voyage she was about to undertake; that ten days after said ship had set sail, to wit: on the .... day of ....., 18.., in latitude, etc. [here set forth particu-

larly all the circumstances of the loss of the ship]; and the said . . . . . further says, that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said ship or her said cargo, has been occasioned solely by the circumstances herein-before stated, and cannot nor ought not to be attributed to any insufficiency of the said ship, or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said . . . . ., doth protest, and I, the said notary, at his special instance and request, do, by these presents, publicly and solemnly protest against winds, weather and seas, and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said ship or her cargo, already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages and injury, which the said . . . . ., or the owner or owners of the said ship, or the owners, freighters or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur or be put unto, by or on account of the premises, or for which the insurer or insurers of the said ship or her cargo is or are respectively liable to pay or make contribution or average according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred or hereafter to be incurred, do fall on him the said . . . . ., his officers or crew.

Thus done and protested, in the city of . . . ., this . . . . day of . . . ., in the year of our Lord one thousand eight hundred and . . . .

In testimony whereof, as well the said appearers, as I, the notary, have subscribed these presents, and I have also caused my seal of office to be hereunto affixed, the day and year last above written.

[L.S.]

Notary public.

*Declaratory Statement for cases where the Land has not been offered at Public Sale.*

I, . . . . ., of . . . ., being the head of a family [or, "widow or single man over the age of twenty-one years," as the case may be, "a citizen of the United States," or, "having filed my declaration to become a citizen, as required by the naturalization laws," as the case may be], have, on the . . . day of . . . . A.D. 18.., settled and improved the . . . quarter of section number . . . ., in township, number . . . ., of range number . . . ., in the district of lands subject to sale at the land office at . . . ., and containing . . . acres, which land has not yet been offered at public sale and thus rendered subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of the act of March 3d, 1853.

Given under my hand, this . . . . day of . . . ., A.D. 18..

Signed in the presence of

*Declaratory Statement for Cases where the Land shall have been offered at Public Sale.*

I, ...., of ...., being the head of a family [or, "widow," or, "single man over the age of twenty-one years," as the case may be], a citizen of the United States [or, "having filed my declaration to become a citizen, as required by the naturalization laws," as the case may be], have, since the .... day of ...., A.D. 18.., settled and improved the .... quarter of section number ...., in township number .... of range number ...., in the district of lands subject to sale at the land office at ....., and containing .... acres, which land has been rendered subject to private entry since the passage of the act of March 3d, 1853, but prior to my settlement thereon; and I do hereby declare my intention to claim the said tract of land as a preëmption right, under the provisions of said act.

Given under my hand this .... day of ...., A.D. 18... ..

Signed in the presence of

.....

*Affidavit to be filed in Cases, under Act of March 3d, 1853, where the Settler shall have died before Proving up and Entering his Claim.*

I, ...., executor of the estate of .... [or, "administrator of the estate of ....," or, "one of the heirs of ...., aged .... years," as the case may be], do solemnly swear [or, "affirm," as the case may be], that, to the best of my knowledge and belief, that the said ...., who was a settler on the .... quarter of section number ...., of township number ...., of range number ...., subject to sale at ....., was not, at the time of his death, the owner of three hundred and twenty acres of land in any state or territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the government of the United States should inure, in whole or in part, to the benefit of any person except himself.

[Signed]

.....

Executor,

[or, "administrator," or, "one of the heirs of .....,," as the case may be].

I, ...., register [or "...., receiver"] of the land office at ...., do hereby certify that the above affidavit was taken and subscribed before me this .... day of ...., A.D. 18..

.....

Register,

[or, "...., Receiver"].

*Affidavit required of Pre-emption Claimant.*

I, ...., claiming the right of preëmption under the provisions of the act of Congress approved March 3d, 1853, to the .... quarter of section number ...., of township number ...., of range number ...., subject to sale at .... do solemnly swear [or, "affirm," as the case may be] that I am

not the owner of three hundred and twenty acres of land in any state or territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself.

[Signed] .....

I, ...., register [or, "...., receiver"] of the land office at ...., do hereby certify that the above affidavit was taken and subscribed before me this .... day of ...., A.D. 18..

[Signed] .....

Register,

[or, "...., Receiver"].

*Certificate of Register.*

United States of America, ..... land district, }  
state of ..... }

To all to whom these presents shall come, greeting: Know ye, that ...., of ..... county, state aforesaid, a ..... citizen of the United States a .... married man, and of the age of twenty-one years, has, on the .... day of ...., in the year of our Lord one thousand eight hundred and ...., filed with the register of the ..... land district of the state of ....., at the land office in ..... his declaratory statement, wherein he claims to have settled and improved the following described government lands, to wit: [here describe the land] township number ...., range number ...., containing .... acres, which land has not yet been offered at public sale, and thus rendered subject to private entry.

In testimony whereof, I ...., register of said land office, have hereto set my hand, at the register's office, in the city of ....., on this .... day of ...., A.D. 18..

.....,

Register.

*Affidavit to be Subscribed by Parties locating Land under School-land Warrants*

Land office, ....., .....

I, ...., of ..... county, ...., being duly sworn, do depose and say, that I did, on or about the .... day of ...., 18.., personally examine the following described lands, viz: [here describe the land], section number ...., township number ...., range number ...., and at that time there was no settlement or cultivation on the said lands whatever or any valid title thereto, and I verily believe there is none at this time.

Subscribed and sworn to before me, this .... day of ....., 18..

.....,

Register.



*Form of Location to be Indorsed on Warrant.*

United States land office, state of .....

I, ....., of ..... county, having taken and subscribed the necessary affidavit, to the effect that there is no settlement on or valid claim to the land sought, do hereby apply to locate this warrant, number ....., upon the .... quarter of section number ..... township number ....., range number ..... This selection is made in part satisfaction of the grant of five hundred thousand acres of land made to the state of California by the eighth section of the act of congress of September 4th, 1841, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights."

Given under my hand and seal, this .... day of .... A.D. 18..

.....

*Patent for School Lands.*

State of ..... }  
Executive department. }

Know all men by these presents, whereas, ..... is the holder of school-land warrant number ....., issued under and by virtue of the act of the state of ..... passed on the .... day of May, one thousand eight hundred and ....., entitled "An act to provide for the disposal of the five hundred thousand acres of land granted this State by act of congress; and, whereas, the said ..... hath located the said warrant [or, "warrants," as the case may be] upon the following described lands, and accepts the same in full satisfaction for said warrant, to wit: [here insert the description of land as contained in register's certificate]. Now, therefore, I, ....., governor of the state of ....., by virtue of the authority in me vested, have given, granted, bargained and sold, and do by these presents give, grant, bargain and sell, unto the said .... all the above-described lands, to have and to hold unto him, the said ...., his heirs and assigns, forever, to and for his and their sole use, benefit and behoof, and for none other.

Witness my hand and the great seal of state, at ....., this .... day of ....., A.D. 18..

[L.S.]

.....

Governor.

Attest: .....,

Secretary of state.

**NOTE OF PROTEST.**

**Note of Protest.**—A note, minute of or protest, made by the notary at the time of protest on the bill or note, to be completed or filled out at leisure. See NOTARY PUBLIC—PROTEST.

## NOTICE OF DISHONOR.

**Notice of Dishonor.**—A notice given to a drawer or indorser of a bill or an indorser of a negotiable note, by a subsequent party, that it has been dishonored, either by non-acceptance in the case of a bill or by non-payment in the case of an accepted bill or note. See **NOTARY PUBLIC—PROTEST**.

**Notice of Protest.**—A notice given to a drawer or indorser of a bill or to an indorser of a note, by a prior party, that the bill has been protested, for refusal of payment or acceptance. See **NOTICE OF DISHONOR**.

## NUISANCE.

**Nuisance.**—A nuisance is anything that unlawfully works hurt, inconvenience or damage.

**Private Nuisance.**—A private nuisance is anything done to the hurt or annoyance of lands, tenements or hereditaments of another.

**Public Nuisance.**—A public nuisance is such an inconvenience or troublesome offense, as annoys the whole community in general and not merely some particular person.

If a Thing is Calculated to interfere with the comfortable enjoyment of a man's house, it is a nuisance; as, when an offensive trade renders the enjoyment of life or property uncomfortable, it is a nuisance.

**Shifting Nuisances.**—A thing may be a nuisance in one place and not in another. A tallow-chandler, setting up his business among other tallow-chandlers, is not guilty of creating a nuisance, unless his chandlery increases the noxious smells in a great degree.

**Nuisances of Themselves.**—The following are considered nuisances of themselves :

**Particular trades**, by which the air is rendered offensive.

**Indecency**, as bathing unclothed in a river, in sight of the neighboring houses.

**Keeping a disorderly house or gaming-house or dangerous animal, known to be such and suffering him to be at large.**

**Exposing a person having a contagious disease, as the small pox, in public, and the like.**

**The bringing a glandered horse into a public place.**

**The leaving unburied the corpse of a person, for whom the defendant was bound to provide christian burial, as a wife or child.**

**Ancient Nuisances.**—Maintaining and carrying on a nuisance for a long time, in a place remote from buildings and public roads, does not entitle the owner to continue in the same place, after houses have been built and roads laid out in the neighborhood. The proprietor or maintainer of such nuisance must give way to the health or enjoyment of the general public, even at his great loss and even absolute destruction of his business.

**Abatement of Nuisances.**—There are two ways to redress a nuisance; one by action, by which the party injured recovers damages and has judgment that the nuisance shall be removed; the other, where the party injured abates the nuisance himself. The abatement of a nuisance by the party injured does not, however preclude him from bringing an action to recover the damages sustained by him anterior to such abatement.

**Party Annoyed Abating.**—If a man on his own soil erect a thing which is a nuisance to another, as by stopping a rivulet and so diminishing the water used by him for his cattle, the party injured may enter on the soil of the other and abate the nuisance and justify the trespass. So if one erects a gate across a way which ought not to be there or otherwise unlawfully obstructs the way, any one who has a right to pass over the way may remove the obstruction. So if any one erects a building, shed or wall, so as to obstruct ancient lights, though on his own land, it is a private nuisance, and the owner of the ancient lights may *peaceably* enter on his land and pull it down. So if a man has a hog-

style or other thing on his land, that corrupts the air in and about his neighbor's house and makes it unwholesome, his neighbor may lawfully remove the nuisance. So if one builds a house so near his neighbor's that it throws water upon it, his neighbor may abate so much as overhangs or projects beyond the line ; but he who abates must be careful he abates no more than overhangs, as no more is a nuisance.

**Care to be Observed in Abating.**—Great care should be taken in abating a nuisance, not to remove or pull down anything more than is absolutely necessary for the abatement of the nuisance, as otherwise the party will render himself liable to an action of trespass. If indeed the nuisance is of so simple a character that there cannot possibly be any mistake as to the extent of the nuisance, as a gate wrongfully erected across the way or the obstructing of a stream, etc.; or if the injury occasioned by the nuisance be *immediate and irreparable*, of such a nature that no pecuniary compensation which the party injured might recover by an action at law could satisfy the wrong done him, then the most effectual remedy is for him to abate the nuisance himself. But where this is not the case the party had better resort to an action of law, whereby he will recover damages for the injury done him and have the nuisance abated by the officers of the court, and thus avoid the danger of being sued for trespass.

**Statutory Provisions.**—The following are the statutory provisions of California, Nevada and Idaho :

**Nuisance Defined.**—Anything which is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment it may be enjoined or abated as well as damages recovered.

**Public Nuisances.**—If any person shall obstruct or injure

or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town or village, or public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any watercourse, lake, pond, marsh or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the country, city, town, village or neighborhood, thereabouts—every person so offending shall, upon conviction, be fined not exceeding one thousand dollars ; and every such nuisance may, by order of the court before whom the conviction may take place or of the district court, be removed and abated by the sheriff of the county.

OREGON.

**Private Nuisance and Abatement thereof.**—Any person whose property is affected by a private nuisance, or whose personal enjoyment thereof is thereby affected, may maintain an action for damages therefor. If the plaintiff recovers, the sheriff may be ordered to abate the nuisance.

**In Particular Cases.**—Whenever any person shall cut down, girdle or otherwise injure or carry off, any tree, timber or shrub, on the land of another person, or on the street or highway in front of any person's house, village, town or city lot or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in any action for such trespass, if judgment be given for plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. If such timber was taken from uninclosed woodland to repair any bridge or public highway, judgment shall only be for single damages.

OBLIGATION.

**Obligation.**—A bond containing a penalty with a condi-

tion annexed, for the payment of money, performance of agreements or the like. A deed whereby a man binds himself under a penalty to do a thing.

### ORIGINAL ENTRY.

**Original Entry.**—The first entry made by a merchant, tradesman or other person, in his account-books, charging another with merchandise, materials, work, or labor or cash, on a contract made between them.

**Such Entry**, to be admissible as evidence, must be made in a proper book. As a general rule, the book in which the first entry is made is received in evidence.

**Previous to being Admitted** it must be proved that the entry was made at the time of the sale of the goods charged, and the whole book must appear to have been kept in a business-like manner.

### PARDONS.

#### CALIFORNIA.

**Application for Pardon.**—The law provides that all pardons applied for to the governor of California, by or on behalf of any person or persons convicted in any of the courts of this state of any crime punishable by imprisonment in the penitentiary and sentenced to such imprisonment, shall be made and conducted as follows :

**Notice to be Given.**—Notice shall be given to the judge of the court in which the indictment was found or the conviction had, and also to the district attorney who prosecuted the indictment under which the prisoner was convicted, of the intention to make application to the governor for pardon, by the party intending to make the application, at least thirty days before the application can be considered by the governor, and a copy of the notice, acknowledged by the judge, shall be forwarded to the governor by the county clerk. The notice shall set forth the name or names of the person or persons in whose behalf the application is intended to be made, the crime of which he, she or they,

have been convicted, the time such conviction was had and the term of sentence.

**Publication of Notice.**—The clerk of the county in which the conviction was had shall cause a copy of the notice to be published in some newspaper published in the county, for at least twenty days before the application shall be considered by the governor; or if no newspaper be published in the county, then a copy of the notice shall be posted by the clerk upon the door of the court-house, twenty days prior to the consideration of the application by the governor; and the clerk shall immediately upon inserting or posting the notice as herein provided, notify the governor thereof, which notification to the governor shall be considered evidence, *prima facie*, that the law in this particular has been complied with

**In Cases where Death is Imminent.**—In any case in which there is imminent danger of the death of any person so committed or imprisoned, and which fact shall appear by the certificate of the physician of the penitentiary and the warden thereof, the foregoing provisions of this act shall not be considered to apply.

**Governor may Pardon, when.**—In any case, the governor may pardon a convict within from one to ten days prior to the expiration of his or her term of imprisonment. In such cases no application for pardon is necessary.

**Expenses of Publication.**—The expenses of publication provided for by this act, shall be paid by the party making the application for pardon; and it is expressly provided that the judge or clerk shall charge no fee on account of any service required under this act; and a refusal or neglect to comply with the provisions of this act is a misdemeanor, and upon conviction thereof the offender shall be removed from office.

#### NEVADA.

**Who may remit Fines and grant Pardons.**—Article five, section fourteen, of the Nevada constitution, provides that the governor, justices of the supreme court and attorney-

general or a major part of them, of whom the governor shall be one, may remit fines and forfeitures, commute punishments and grant pardons, after convictions, in all cases except treason and impeachments.

**Notice of Application.**—Any person intending to apply to have a fine or forfeiture remitted or a punishment commuted or a pardon granted, or some one in his behalf shall make out duplicate copies of notices, in writing, of such application, specifying therein the court in which the judgment was rendered, the amount of the fine or forfeiture, or kind or character of punishment, and the name of the person in whose favor the application is intended to be made, and the time when the application will be presented, one of which shall be served on the district attorney of the proper county, and one on the district judge of the court wherein the conviction was had, except in cases of fines and forfeitures, when the copy of notice, instead of being served on the district judge, shall be served on the chairman of the board of county commissioners of the proper county. The notice shall be served, as herein provided, at least thirty days prior to the presentation of the application, unless a district judge, for good cause, prescribe a shorter time. If the pardon include restoration to citizenship, it shall be so stated in the instrument or certificate of pardon; and when granted upon conditions, limitations or restrictions, the same shall be fully set forth in the instrument, as aforesaid. Such instrument or certificate shall also contain an order to the officer having the person in custody to discharge him or her from such custody, upon a day to be named in said instrument, upon the conditions, limitations or restrictions, therein named.

**No Discharge from Bail Bond allowed.**—The fines and forfeitures herein mentioned, shall not be so construed as to include the remittance or discharge from liability on any bail bond.

#### IDAHO.

**The Organic Act** of Idaho vests the pardoning power in the governor. No form of application for pardon is neces-



sary, nor is any notice to be given of intention to apply for pardon.

OREGON.

**Power of Governor to Grant Reprieves and Pardons.**—The governor has power to grant reprieves, commutations and pardons, after conviction, for all crimes, and to remit, after judgment therefor, all penalties and forfeitures, upon such conditions and with such restrictions and limitations as he may think proper, subject to the following limitations :

**Report Required before Pardon can be Granted.**—When application is made to the governor for a pardon, before granting the same he must require the judge of the court in which the conviction was had or the district attorney by whom the action was prosecuted, to furnish him without delay, with a statement of the facts proved on the trial and of any other facts having reference to the propriety of granting or refusing the pardon ; and this also applies to an application for the remission of a fine or forfeiture.

**Notice of Intention to Apply for Pardon.**—At least twenty days before the application for a pardon or remission is made to the governor, written notice of the intention to apply therefor, signed by the person applying, and stating briefly the grounds of the application, must be served upon the district attorney of the county where the conviction was had, and proof by affidavit of the service must be presented to the governor.

FORMS.

*Notice of Intention to Apply for Pardon.*

To the honorable .... [judge of the court in which the conviction was had or in which the indictment was found: as, "judge of the district court of the .... judicial district, county of ... ;" or, "judge of the county court of ..... county and .... esq., district attorney in and for the county of ....."] state [or, "territory "] of ..... :

You and each of you are hereby notified that it is the intention of the undersigned to apply to the governor of the state of ..... for the pardon of ..... , who was convicted at the .... term of the ..... court of the county of ..... , A.D. 18.., of the crime of ..... , and sentenced on the .... day of ...., 18.., to [here state the punishment sentenced to be inflicted].

[Signed]

.....

Dated ...., 18...

*Acknowledgment of Service to be Indorsed on the Foregoing.*

We and each of us hereby acknowledge due and legal service of the within notice, this .... day of ...., 18..

[Signed]

.....,  
District [or "county"] judge.  
.....,  
District attorney.

*Affidavit of Service of the Foregoing Notice in case the Judge or District Attorney do not Acknowledge Service of the Notice.\**

State of ..... }  
county of ..... }

...., being duly sworn, says that, on the .... day of ...., 18.., at ....., he personally served the foregoing notice [or, "within notice"] on ....., ["judge" or "district attorney"] by delivering to each of them, personally, a copy of said notice; and deponent further states that he is a free white male citizen of the United States and over twenty-one years of age.

[Signed]

.....

Subscribed and sworn to before me, this .... day of ....., A.D. 18..

.....,

Notary public,

[or, other officer empowered to administer oaths.]

## PARTITION.

**Partition—Division of Land between Part Owners.—**

When several co-tenants hold and are in possession of real property as parceners, joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners

## PARTNERSHIP.

**Partnership, What Constitutes.—**A partnership results from a contract by which two or more persons agree to

\* In Oregon, in all cases, affidavit is necessary.

combine their property or labor, for the purpose of a common undertaking and the acquisition of a common profit.

**The Power it Gives** to one partner over the fortunes of all others, renders it important that all should know when that relation really exists, as the attempt is often made to realize the benefits of a partnership without being subjected to its liabilities.

**Formation of Partnerships.**—All partnerships other than special may be formed indifferently, as follows :

- 1st. By articles of partnership formally executed and mutually exchanged.
- 2d. By a verbal agreement.
- 3d. By the acts of the parties.

**Writing not Necessary.**—Whether partnership agreements are written or unwritten it can make no difference to any others than the partners, as one partner can bind the others to the full extent of the partnership business.

**Agreement of Partnership.**—In all cases it is thought best to draw up an agreement, showing the extent and objects of the partnership, which will be evidence between the partners on settlement of the partnership affairs, and notice in law to all persons having actual notice of the partnership agreements and limitations.

**Powers and Duties.**—One partner has power to bind the partnership by his agreement or contract in relation to anything or business within the scope of the partnership, as fully as he might do were he not a partner and acting in matters of his own private business. If the custom of the partnership is to purchase or sell on credit, he may involve the firm to any amount. He may dispose of all the stock in trade unknown to his partners; and, in short, he may do any act regarding the business that he could do had he no partner and was acting for himself. It is his duty to take every care of the partnership funds, and give his best care and attention to the partnership business.

**Exemptions.**—One partner cannot sue his partner on account of the partnership until the partnership is dis-

solved. For example : A and B are partners. A overdraws his account, or fails to account to the partnership for moneys belonging to it ; B cannot sue and recover from A anything until the partnership is dissolved, even if B is positive there is not enough left in the partnership to balance the account of A. If one partner appropriates all the funds of the partnership, he is, in law, guilty of *no crime*, and the injured party must look to the civil courts for redress.

**Care to be Observed in Forming Partnership.**—The greatest care, then, should be observed in selecting a partner or forming a partnership, as it is a connection than which none more close can exist among men. It places in the power of him with whom you form it your property and your reputation. His virtues and his skill, in unison with your own, may raise you to the highest pinnacle of prosperity. His folly or his crimes, may strip you of every flourishing branch and leaf, and leave you, a naked, withered and dishonored trunk. It should be formed, therefore, with little less care than the marriage tie, to which it has been not inaptly compared. In California, the sea of mercantile and mining adventures is strewn with the wrecks of many once, seemingly, prosperous firms, cast away through the incapacity or dishonesty of partners ; and the shattered, unsightly remains of what were once noble and apparently indestructible mercantile houses, line the “gutters,” “slums,” and “dead-falls,” of her cities. Not a few of her former “merchant princes” now bent with age and poverty-stricken, totter with uncertain tread and sorrowful visage, to charitable institutions for relief, doomed to paupers’ graves.

**Deductions.**—The deductions of wisdom from the foregoing are these : Never embark all of your capital in a partnership venture—save something against adversity—select your partner with the same care observed in selecting a wife ; then, when you have made your selection, repose the utmost confidence in your partner, and do unto him as you would he should do unto you.

**General Liability.**—The liability of each member of the firm for its just debts created, after he became a partner, extends not only to his interest in the property of the partnership, but also to his individual property. And such liability may be created not only by the joint act of the firm but by that of either member.

**Dissolution of.**—A partnership may be dissolved at the will of any member, unless differently provided by the articles of agreement. He could not, however, exercise this power wantonly and injuriously to the other partners, without making himself responsible for the damage he may cause.

**Extent of Liability.**—Before or after a dissolution the *private property* of each member of the partnership may be taken on execution for the partnership debts so long as the property lasts or debts remain unpaid.

**Death of Partner.**—Death works a dissolution of all partnerships, and the surviving partners have a right to close up the business, and they must account to the deceased partner's representatives.

PARTNERSHIPS LIMITED,—STATUTES OF CALIFORNIA, 1871.

**Formation of Special Partnerships.**—Sec. 1. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this Act, for the transaction of any business except banking or insurance.

**Of what to consist.**—Sec. 2. A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners.

**Certified Statement.**—Sec. 3. Persons desirous of forming a special partnership must severally sign a certificate, stating:

First, The name under which said partnership is to be conducted;

Second, The general nature of the business intended to be transacted;

Third, The names of all the partners and their residences, specifying which are general and which are special partners.

Fourth, The amount of capital which each special partner has contributed to the common stock; and,

Fifth, The periods at which such partnership will begin and end.

**Acknowledgment and Record.**—Sec. 4. A certificate under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it shall be recorded, shall be filed and recorded in like manner, in the office of the recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable, as general partners, for all the engagements thereof.

**Affidavit of Sums contributed.**—Sec. 5. An affidavit of each of the partners stating that the sums, specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

**When Formed.**—Sec. 6. No special partnership is formed until the provisions of the last five sections are complied with.

**Certificate to be Published.**—Sec. 7. The certificate mentioned in section third, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper be there printed, then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publications be not so made, the partnership shall be deemed general.

**Affidavit of Publication to be Filed.**—Sec. 8. An affidavit of the making of the publication mentioned in section seventh made by the printer, publisher, or chief clerk, of the newspaper in which the publication is made, may be filed with the county recorder with whom the original certificate was filed, and shall be presumptive evidence of the facts therein stated.

**Renewal of Special Partnership.**—Sec. 9. Every renewal or continuance of a special partnership must be certified,

recorded, verified and published, in the same manner as upon its original formation.

**Who to do Business.**—Sec. 10. The general partners only have authority to transact the business of a special partnership.

**Special Partners may advise.**—Sec. 11. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agent, as to their management.

**May Loan Money.**—Sec. 12. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans and advances has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

**General Partners May Sue and Be Sued.**—Sec. 13. In all matters relating to a special partnership its general partners may sue and be sued alone, in the same manner as if there were no special partners.

**Withdrawal of Capital.**—Sec. 14. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

**Interest and Profits.**—Sec. 15. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

**Result of Withdrawing Capital.**—Sec. 16. If a special partner withdraws capital from the firm, contrary to the provisions of section fourteen, he thereby becomes a general partner.

**Preferential Transfer Void.**—Sec. 17. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created or security given, in like manner and with like intent, is in like manner void.

**Liability of Partners.**—Sec. 18. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

**Special Partners.**—Sec. 19. The contribution of a special partner to the capital of the firm and the increase thereof is liable for its debts, but he is not otherwise liable therefor, except as follows:

First, If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all creditors of the firm;

Second, If he has willfully interfered with the business of the firm except as permitted by sections ten and eleven, he is liable in like manner, or,

Third, If he has willfully joined in, or assented to, an act contrary to the provisions of sections fourteen and seventeen, he is liable in like manner.

**Creditors Misled.**—Sec. 20. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby, to his prejudice.

**Errors in Creation of Partnerships.**—Sec. 21. One who, upon making a contract with a partnership, accepts or gives to it a written memorandum of the contract, stating that the partnership is special and giving the names of the special partners, cannot afterwards change the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law.

**When Special Partnership becomes General**—Sec. 22. A special partnership becomes general if within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact duly verified and signed by one or more of the partners, is not filed with the county recorder; with whom the original certificate of the partnership was filed, and notice thereof published, as is provided in section seven.

**New Partners may be admitted.**—Sec. 23. New special partners may be admitted into a special partnership, upon a certificate stating the names, residences and contributions to the common stock, of each of such partners, signed by each of them and by the general partners, verified according



to section five, acknowledged or proved and filed, according to section four, with the county recorder with whom the original certificate of the partnership was filed.

**Dissolution.**—Sec. 24. A special partnership is subject to dissolution in the same manner as a general partnership; except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county recorder with whom the original certificate was recorded, and published once in each week for four successive weeks in a newspaper printed in each county where the partnership has a place of business.

**Special Partner's Name not to be used.**—Sec. 25. The name of a special partner shall not be used in the firm name of partnership, unless it be accompanied with the word—limited.

**Future Partnerships.**—Sec. 26. Special partnerships hereafter formed shall be under the provisions of this act.

## FORMS.

### *Commercial Partnership Agreement.*

Memorandum of agreement made and entered into at the city of . . . , this . . . day of . . . , A.D. eighteen hundred and . . . , between . . . , . . . and . . . , all of the city of . . . , witnesseth, that the said parties have this day and do hereby associate themselves together as copartners in trade, in said city of . . . , under the firm name and style of . . . , . . . and . . . , and do make and adopt the following covenants, provisions and articles, of agreement, with each other, respecting their said copartnership and the business to be conducted by them, viz :

1st. The said copartnership shall continue for . . . years from the date hereof.

2d. The said copartners shall contribute to the capital stock of said copartnership as follows : The said . . . and . . . , at least . . . dollars each, and the said . . . , at least . . . dollars in cash. [Or, each one contributes an equal sum. If one contributes more than another and interest is to be allowed, state the rate, etc.]

3d. The partners shall share the profits of their said business equally. [State how they are to share.]

4th. The said copartnership engaged in the general grocery, provision and liquor, business, and the character of the business shall not be changed without the consent of all the partners thereto in writing.

5th. No partner shall sign or use the firm name for any purpose not connected with their legitimate business, and shall not sign or indorse any promissory note, bond, obligation or agreement, nor become surety, for the benefit or accommodation of any person whatever, without the consent, in writing, of his copartners. [Or, "he shall not sign or indorse," etc., in matters not in relation to the firm's business.]

6th. Each partner shall devote his exclusive attention to the business of the firm, and shall engage in no other business or transaction whatever, but

this shall not be held to prevent either partner from employing his private means in any investment or transaction he may please : *provided*, however, he do not employ or invest them in any business or transaction that may compete with the business and interests of the copartnership.

7th. Each partner shall consult his copartners in reference to all transactions connected with the business, as often as practicable, and if practicable to advise and consult with his copartners ; neither party shall make any purchase exceeding . . . . . dollars, without the consent of such partners, nor any sale and delivery on credit exceeding . . . . . dollars, without the like consent.

8th. The said . . . . . and . . . . . shall be allowed to draw from the profits of the concern an amount not to exceed . . . . . dollars a month, and the said . . . . . not to exceed . . . . . dollars a month, for their personal expenses.

9th. The profits of the concern shall be suffered to remain in the business, and no part of the same shall be withdrawn except the allowance and personal expenses as aforesaid, except by consent of all parties.

10th. Full, true and perfect, books of accounts shall be kept, to which either partner shall have access at all times ; balances shall be struck and balance sheets shall be made out as often as once in every . . . . . months, at which time each partner shall be entitled to be credited with his share of the earned profits of the business not withdrawn, as an increase of his capital.

11th. Upon a dissolution of the copartnership, any excess of capital which one partner may have invested in the concern, shall be first paid, and after that the property of the concern shall be equally divided between the partners.

In witness whereof, the said parties to these presents have signed hereto and to two others of like tenor and date, the day and year first mentioned.

[Signed]

.....  
.....  
.....

#### *General Copartnership.*

Articles of agreement, made this . . . . . day of . . . . ., one thousand eight hundred and . . . . ., between . . . . . of the one part, and . . . . ., of the other part, witnesseth, as follows : The said parties above-named have agreed to become copartners in business, and by these presents do agree to become copartners in business together, under and by the name or firm of . . . . . and . . . . ., in the business of . . . . . and . . . . ., and in buying, selling and vending, all sorts of goods, wares and merchandise, to the said business belonging, and to occupy the store No. . . . . street, in the city of . . . . ., their copartnership to commence on the . . . . . day of . . . . ., 18 . . ., and to continue for the term of . . . . . years from thence next ensuing, fully to be complete and ended ; and to that end and purpose the said . . . . . and . . . . ., have delivered in, as capital stock, the sum of . . . . . dollars, share and share alike, to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.

And it is agreed, by and between the parties to these presents, that at all times during the continuance of their copartnership, they and each of them, will give their attendance, and to the utmost of their skill and power exert themselves, for their joint interest, profit, benefit and advantage, and truly employ, buy and sell, merchandise, with their joint stock, and the increase thereof, in the business aforesaid; and, also, that they shall and will, at all times, during their copartnership, bear, pay and discharge, equally between them, all rents and other expenses that may be required for the support and management of the said business, and that all gains, profits and increase, that shall come, grow or arise, from or by means of their said business, shall be divided between them, the said copartners, share and share alike; and all loss that shall happen to their said joint business, by all commodities, bad debts or otherwise, shall be borne and paid equally between them. And it is agreed, by and between the said parties, that there shall be kept, at all times during the continuance of their copartnership, perfect, just and true, book of accounts, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out and expended, in and about the said business, as also all the goods, wares, commodities and merchandise, by them or either of them bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and management thereof, in anywise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto. And also, the said copartners, once in each year, during the continuance of the said copartnership as aforesaid (to wit: on the .... day of ...., in each year), or oftener if necessary, shall make, yield and render, each to the other, a true, just and perfect, inventory and account of all the profits and increase by them or either of them made, and of all loss by them or either of them sustained; and also, of all the payments, receipts and disbursements, and of all other things by them made, received, disbursed, acted or suffered, in their said copartnership and business, and the same account being so made, they shall and will clear, adjust, pay and deliver, each to the other, at the time their just share of the profits so made as aforesaid; and the said parties hereby mutually covenant and agree to and with each other, that during the continuance of the said copartnership, neither of them shall or will indorse any note or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just and final, account of all things relating to their said business, and in all things truly adjust the same; and all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them, share and share alike.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year above written.

[Signed]

..... [L.S.]

..... [L.S.]

Signed and sealed, in presence of

.....

*Farming Partnership Contract.*

Memorandum of an agreement made and entered into at the .... of ...., the .... day of ...., A.D. eighteen hundred and ...., between ...., of .... county, and .... and ...., of said .... of ...., witnesseth, that the said parties named above have become and now are the owners of the following described property, situated in the county of .... [insert description], and of the stock, personal property and improvements, thereon, each of an undivided one-third of the same, as tenants in common and not as joint tenants, and they have agreed upon the following terms and articles of association, for the possession and improvement of said property :

The said parties agree to continue together in the business of raising cattle, horses and other stock, and general farming, upon the land aforesaid, for the period of .... years from the date hereof, and they shall be equally entitled to the increase and profits arising from the same.

All business transacted by any of said parties respecting their common affairs, shall be done with the knowledge and consent of the other associates ; all sales shall be made for cash, and no purchases whatever shall be made, except for cash, without they all agree thereto. No promissory note or other obligation shall be signed or indorsed by any of the associates, in reference to matters affecting their common interest, except by the unanimous consent of all. Each of the associates shall be required to give his personal attention and services to the business and affairs of the association or to be represented by other labor in his place, or to make some equivalent therefor. The proceeds of all crops, stock or produce, sold shall belong to the associates. Neither of the associates shall draw from the funds of the association more than .... dollars per month, for his personal use, and all marketable produce taken from the common stock or general farm, for the private use or consumption of either of the associates, shall be charged to and accounted for by the person who shall have taken the same.

In witness whereof, etc.

*Agreement to make a Partnership at a future Day.*

This agreement, made the .... day of .... one thousand eight hundred and ...., by and between ...., of the first part, and ...., of the second part, both of the county of ...., state of ...., witnesses :

The said parties mutually covenant, promise and agree, to and with each other, that at any time from and after the expiration of .... months from the date of this agreement, they, the said parties, shall and will, upon .... days' notice in writing from either to the other, enter into and execute written articles of copartnership [under seal] to carry on the business of ...., at the city of ...., in the state of ...., and in the United States of America generally ; said articles of copartnership to go into effect as soon after the execution thereof as may be ; the term of the said copartnership to be not less than .... nor more than .... years from the date of said articles, fully to be complete and ended.

That the firm name of said copartnership shall be .... & Co., the

profits to be divided equally, and any losses, if such there be, to be borne by said parties equally; that at all times during the continuance of their said copartnership, the said parties and each of them, shall and will give their attendance and do their and each of their best endeavors and to the utmost of their skill and power, exert themselves for their joint interest, profit, benefit and advantage, in the business aforesaid; that the said .... shall have the charge, direction and control, of the business department of said copartnership.

And the parties also further mutually covenant, promise and agree, to and with each other, that this agreement shall be and remain in force, for .... years from the date thereof; and for the true and faithful performance of all the covenants and agreements above-mentioned, the parties to these presents, have this day executed and delivered, each to the other, bonds in the sum of .... dollars, as fixed and liquidated damages to be paid by the failing party, which said bonds are hereto annexed and form part of this agreement.

..... [L.S.]  
 ..... [L.S.]

*Agreement to Renew Partnership to be Indorsed on Original Article.*

Whereas, the partnership formed by and mentioned in the within article of agreement has this day expired [or, "will expire on the .... day of .... next"] by the limitations contained herein, it is therefore hereby agreed that the same shall be continued, on the same terms and with all the provisions and restrictions in said agreement mentioned, for the further term of .... years from this date [or, "from the .... day of .... next"].

Witness our hands and seals, this .... day of ...., 18..

.....  
 .....

In presence of

.....

*Agreement of Dissolution to be Indorsed on the Original Article.*

By mutual consent of the undersigned, the parties to the within agreement, the partnership thereby formed is wholly dissolved, except so far as it may be necessary to continue the same for the final liquidation and settlement of the business thereof; and said agreement is to continue in force until such final liquidation and settlement be made, and no longer.

Witness, etc.

*Agreement to make Changes in a Copartnership.*

This agreement, made this .... day of ...., A.D. 18.., between . . . . ., of the one part, and .... . . ., of the other part, witnesseth:

Whereas, on ....., the said .... and .... entered into and made, by agreement in writing, a copartnership under the style and firm of .... & Co., for the purpose of carrying on a general fancy dry-goods business in ....., which partnership was, by the terms of such agreement, to expire on .....

And, whereas, it is thought best by said .... & Co. that the said agreement of copartnership should be modified as to the period fixed for the expiration thereof and in other respects as hereinafter set forth; and, whereas, the said .... is desirous of making with the said .... an agreement for the selling out, at a future period, to said ...., he, said ...., of all his right, title, interest and share, in the said copartnership and in the stock, assets and property, of every kind thereto belonging, as hereinafter set forth :

Now, therefore, the said .... and .... mutually agree with and to each other as follows :

1st. On ....., the sum of .... dollars shall be placed to the credit of said .... upon the books of .... & Co., which sum shall be paid out of the concern to him at any time within .... years from that date, in amounts of not less than .... dollars at a time, together with interest at .... per cent. per month until paid.

2d. There shall also be paid to said ...., from and after said ....., the sum of .... dollars per month, payable monthly, so long as the said sum of .... dollars, with interest as aforesaid, shall remain unpaid.

3d. Upon the payment to said .... of the sum of money as in articles one and two mentioned, the same shall be in lieu and in full to him of all his right, title and interest, in and to the said copartnership of .... & Co. and the stock, good-will, firm-name, assets and property, of every kind whatever, thereunto belonging, and the same shall fully vest in and belong to the said ...., and all interest, right and title, of the said .... shall then and thereby wholly cease and determine, and the said copartnership of the said .... and the said .... shall then and thereby expire and be dissolved.

4th. That in the meantime, and until the contingency as provided and set forth in article three shall have taken place, the said .... shall continue to give his whole time and attention to the said copartnership of .... & Co. and to the business and affairs thereof, under and subject to the control and management of the said .... so long as he shall be present and able to act. At all times during said period the said .... shall have full and free access to the book accounts and papers of said copartnership.

5th. The payment to the said .... of the sum of money in articles one and two mentioned, shall be in lieu and in full to him of all his share or interest of and in the profits of the said copartnership.

In witness whereof, the parties hereto have signed and sealed this agreement the day above-named.

[Signed]

.....  
.....

*Agreement of Limited Copartnership, in Accordance with the Act of the Legislature of California of April 4th, 1850, and the Amendments.*

Articles of agreement made and concluded this ... day of ....., A.D. one

thousand eight hundred and . . . . , between . . . . ., of the city of . . . . ., of the first part, . . . . ., of said city, of the second part, and . . . . ., of the city of . . . . , of the third part.

The said parties to these presents do hereby agree to associate themselves together in a limited partnership for the purpose of carrying on, in the city of . . . . ., the art and trade of manufacturing, purchasing and selling, . . . . , under the name and style of . . . . & . . . . , the said . . . . . and . . . . . being general partners and the said . . . . . a special partner; that said copartnership shall commence at and on the date of these presents and terminate on the . . . . day of . . . . , A.D. one thousand eight hundred and . . . . ; that the said . . . . ., as a general partner, has contributed in cash [or otherwise, as the case may be] the sum of . . . . dollars; that the said . . . . ., also as a general partner, has contributed the sum of . . . . dollars, and the said . . . . ., as a special partner has contributed also the sum of . . . . dollars, to the capital stock of the said firm.

It is further agreed by and between the parties to this agreement that the interest in the capital stock aforesaid, of each of the partners, shall be the one-third of the yearly profits of the business of said firm.

And it is further mutually understood and agreed by and between the parties hereto, that if any one of the respective parties desire the portion of the annual profits to which he may be entitled to remain with said firm for the mutual use and benefit of all the parties to this agreement, then and in that case the portion of the profits so remaining shall draw interest at the rate of . . . . per cent. per annum, which said interest shall be paid to the party entitled thereto on the . . . . day of . . . . thereafter in each and every year during the term of this agreement.

And it is further agreed, by and between the parties to this agreement, that . . . . . and . . . . . shall and will, from time to time, and at all times during the said term [if they shall so long live], devote their personal services, skill and ability, to the business of said firm, and for the mutual benefit of all the parties to this agreement, and as a compensation for said services the said . . . . . and . . . . . shall each be allowed a salary of . . . . . dollars per month, to be drawn from the profits of said business on the . . . . day of every month during the term of this agreement.

And it is further agreed, by and between the parties to this contract, that the said general partners shall, during the term of copartnership, keep true and just books of accounts, in which shall be entered all moneys received and expended in and about the business of said firm, to which books each of the respective parties hereto shall have free access.

And also, on the . . . . day of . . . . , in each and every year during the term of said copartnership, a general account shall be stated of all profits made and losses sustained by said firm; and further, upon making the said account at the expiration of the term hereof, a copy of said account shall be furnished to each of the parties to this agreement, his executors, administrators or assigns; and at the same time all the capital stock, together with the profits thereof, shall be divided between the said parties, their executors, administrators and assigns, in the proportions first above mentioned, to wit: one-third to each and every one of the parties hereto.

And it is further agreed, by and between the parties to this agreement, that, during the term hereof, no one of the parties hereto shall pledge his individual liability for or on behalf of any person or matter beyond the business of this copartnership.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

[Signed] ..... [L.S.]  
 ..... [L.S.]  
 ..... [L.S.]

Signed, sealed and delivered, in presence of

.....

*Certificate of Limited Partnership, in accordance with the said Act.*

This is to certify, to all to whom these presents shall come, that we, whose names are hereunto severally subscribed, have entered into a limited partnership, within the state of ....., under and by virtue of an act of the legislature of said state [and the supplements thereto], passed the ..... day of ....., A.D. 18.., entitled "An act to authorize the formation of limited partnerships, and the amendments and acts supplemental thereto," upon the terms and liabilities hereinafter set forth, to wit:

1st. The said partnership is to be conducted under the name and style of ..... & .....

2d. The names of the general partners in the said firm are ..... and ..... both residents of the city of ....., state of ....., and the special partner is ..... of the city of ....., state aforesaid.

3d. The said special partner, ..... has contributed to the capital stock of said firm the sum of ..... dollars.

4th. The general nature of the business to be transacted by the said firm is the manufacturing, purchasing and selling .....

5th. The said partnership is to commence immediately at and after the signing of this certificate, and is to terminate on the .... day of ....., A.D. one thousand eight hundred and ....

Made and severally signed by the said partners, at the city of ....., the .... day of ....., A.D. one thousand eight hundred and ....

[Signed] .....  
 .....  
 .....

[Acknowledged by all the partners in due form, the same as in deeds and mortgages.]

*Affidavit of Publication on foregoing Certificate.*

County of ....., ss:

....., being duly sworn, says, that he is a .... [or, "publisher"], of the ....., a daily newspaper, printed and published in the county of ....., and that the annexed certificate has been published in said paper daily, for three successive weeks, commencing on the .... day of ....., 18.., and ending this .... day of ....., 18..

[Signed] .....

Sworn before me, ....., 18..

.....

Notary public.



## PARTY WALLS.

**Party Walls.**—Where a party wall exists between two buildings belonging to different persons, if one of them take it down with his building, he must re-erect it in reasonable time and with the least inconvenience. The other owner shall contribute to the expense, if the wall requires repairs; but he cannot be charged with the expense of a wall more costly than the former one.

**If two Persons** have a party wall, one-half of the thickness of which stands on the land of each, they are not therefore tenants in common of the wall or of the land on which it stands, although the wall was erected at the joint expense of the two proprietors. The common use of a wall separating adjoining lands belonging to different owners, is *prima facie* evidence, however, that they are tenants in common.

**Removing and Repairing.**—If the owner of a house in a compact town finds it necessary to pull it down and remove the foundations of his building, and he gives due notice of his intention to the owner of the adjoining house, he is not answerable for the injury which the owner of that house may sustain by the operation, provided he remove his own with reasonable and ordinary care. Where there had been no party wall, but the wall of the house destroyed stood wholly on the lot of the house pulled down or destroyed, yet if the beams of the adjoining house rested upon the wall pulled down and had done so for a period sufficient to establish an easement by prescription, the owner of the adjoining house would be entitled to have the beams of his house inserted for a resting-place in the new wall, should one be erected.

## PATENTS.

The act of Congress of July 8, 1870, is the only law now in force relating to patents for inventions and designs, and to trade marks and copyrights. What follows is selected from the latest rules and regulations of the patent office:

**Who may Obtain a Patent.**—Any person, whether citizen or alien, being the original and first inventor or discoverer of any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent for his invention or discovery, subject to the conditions as to public use and abandonment herein-after named.

**Death of Inventor.**—In case of the death of the inventor, the patent may be applied for by, and will issue to, his legal representatives; and in case of an assignment of the whole, or of any undivided interest in the invention, the patent may issue to the assignee of the whole interest, or jointly to the inventor and the assignee of the undivided interest, the assignment being first entered of record, and the application being duly made and the specification duly sworn to by the inventor.

**Joint Inventors.**—Joint inventors are entitled to a joint patent; neither can claim one separately; but independent inventors of separate improvements in the same machine cannot obtain a joint patent for their separate inventions; nor does the fact that one man furnishes the capital and the other makes the invention entitle them to take out a joint patent.

**When Not Granted.**—Although an applicant may have actually made an invention, a patent therefor will not be granted him if the whole or any part of what he claims as new has been, before his invention, patented or described in any printed publication in this or any foreign country, or been invented or discovered in this country, nor if he has once abandoned his invention to the public, nor if it has been in public use or on sale for more than two years previous to his application.

**When Granted.**—If the inventor, at the time of making his application, believes himself to be the first inventor or discoverer, a patent shall not be refused an account of the invention or discovery, or any part thereof, having been before known or used in any foreign country; it not appearing that the same or any substantial part thereof had before been patented or described in any printed publication.

**What is Invention.**—Merely conceiving the idea of an improvement or machine is not an “invention” or “discovery.” The invention must have been reduced to a practical form, either by the construction of the machine itself, or of a model thereof, or by making a drawing of it, or by such disclosure of its exact character as that a mechanic can and does, from the description given, construct the improvement or a model thereof, before it will prevent a subsequent inventor from obtaining a patent.

**Application.**—All applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the commissioner that such delay was unavoidable.

**Who Must Apply.**—The application must be made by the actual inventor, if alive, even if the patent is to issue or reissue to an assignee; but where the inventor is dead, the application and oath may be made out by the executor or administrator.

**How Made.**—The application must be made in writing, in the English language, and addressed to the commissioner of patents. The petition and specification must be separately signed by the inventor. All claims and specifications must be written in a fair, legible hand, without interlineations or erasures, except such as are clearly stated in a marginal or foot note written on the same sheet of paper; other-

wise the office may require them to be printed. All the papers constituting the application must be attached together

**Specification.**—The specification is a written description of the invention or discovery, and of the manner and process of making, constructing, compounding and using the same, in such full clear, concise, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same.

The applicant must set forth in his specification the precise invention for which he claims a patent; and in all applications for mere improvements, the specification must distinguish between what is admitted to be old and what is described and claimed to be the improvement, so that the office and the public may understand exactly for what the patent is granted.

Two or more distinct and separate inventions may not be claimed in one application; but where several inventions are necessarily connected each with the other, they may be so claimed.

If more than one invention is claimed in a single application, and they are found to be of such a nature that a single patent may not be issued to cover the whole, the office requires the inventor to divide the application into separate applications or to confine the description and claim to whichever invention he may elect.

The specification should describe the drawings, (where there are drawings,) and refer by letters and figures to the different parts; and having fully described the art, machine, manufacture, composition, or improvement, it should particularly specify and point out the part, improvement, or combination which is claimed as the invention or discovery.

The specification must be signed by the inventor, or by his executor or administrator, and must be attested by two witnesses. Full names must be given, and all names, whether of applicant or witnesses, must be legibly written.

**Oath.**—The oath or affirmation may be made before any person within the United States authorized by law to administer oaths or, when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent, holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be, the oath being attested in all cases, in this and other countries, by the proper official seal of such notary.

**Drawings.**—The applicant for a patent is required by law to furnish a drawing of his invention, where the nature of the case admits of it.

Such drawing must be on thick, smooth drawing paper, sufficiently stiff to support itself in the portfolios of the office. It must be neatly and artistically executed, with such detached sectional views as to clearly show what the invention is in construction and operation. Each part must be distinguished by the same number or letter whenever it appears in the several drawings. The name of the invention should be written at the top, the shortest side being considered as such. This drawing must be signed by the applicant or his attorney, and attested by two witnesses, and must be sent with the specification. Tracings upon cloth pasted on thick paper will not be admitted. Thick drawings should never be folded for transmission, but should be rolled.

The duplicate drawing to be attached to the patent will be furnished by the office without charge, and will be a photolithographic copy of the thick drawing.

The following rules must be observed in the preparation of the drawings, in order that they may be photolithographed:

The paper must be thin bristol board or thick drawing paper, with a smooth or calendered surface. The outlines must be executed in deep black lines, to give distinctness to the print. Pale, ashy tints must be dispensed with.

In shading, lines of black ink should be used, and such

lines should be distinct and sharp, and not crowded. Brush shadings or shadows will not be permitted.

**All colors**, except black, must be avoided in the drawing, lettering and signatures; violet and purple inks must not be used.

**No agent's**, attorney's, or other stamp must be placed, in whole or in part, within the margin.

**The sheet** must not be larger than ten inches by fifteen, that being the size of the patent. If more illustrations are needed, several sheets must be used.

**Copies.**—Copies of drawings of patents issued after January 1, 1869, will be furnished to any one at the uniform rate of twenty-five cents per sheet of standard size.

**Copies of drawings** of patents issued prior to January 1, 1869, which can be photo-lithographed, will be furnished at twenty-five cents per sheet, when ten or more copies are ordered. Single tracings of such drawings, or less than ten, will be furnished at the cost of making them. One hundred copies or more will be furnished at ten dollars per hundred.

**Applicants** are advised to employ competent artists to make the drawings, which will be returned if not executed in strict conformity with these rules, or if injured by folding.

**Model.**—An applicant, upon filing his specification and drawings, may submit to the commissioner the question whether he shall deposit a model or specimen of his invention; otherwise a model will be required in every case, except for designs, where the nature of the invention admits of such illustration. Such model must clearly exhibit every feature of the machine which forms the subject of a claim of invention.

**The model** must be neatly and substantially made, of durable material. It should be made as small as possible, but not in any case more than one foot in length, width or height. If made of pine or other soft wood, it should be painted, stained, or varnished. Glue must not be used, but the parts should be so connected as to resist the action of heat or moisture.

**A working model** is always desirable, in order to enable the office fully and readily to understand the precise operation of the machine. The name of the inventor and of the assignee, (if assigned,) and also the title of the invention, must be affixed upon it in a permanent manner. When the invention is a composition of matter, a specimen of each of the ingredients and of the composition must accompany the application, and the name of the inventor and of the assignee (if there be one) must be permanently affixed thereto.

**Reissues.**—A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when by reason of a defective or insufficient specification the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention; but although the patent has been assigned, the application must be made, and the specification sworn to by the inventor.

The petition for a reissue must show that all parties owning any undivided interest in the patent concur in the surrender. A statement, under oath, of the title of the party proposing to surrender must be filed with the application.

The general rule is, that whatever is really embraced in the original invention, and so described or shown that it might have been embraced in the original patent, may be the subject of a reissue; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended except each by the other: but when there is neither model nor drawing; amendments may be made upon proof satisfactory to the commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

Reissued patents expire at the end of the term for which the original patent was granted.

A patentee, in reissuing, may at his option have a separate patent, for each distinct and separate part of the invention comprehended in his original patent, by paying the

required fee in each case, and complying with the other requirements of the law, as in original applications. Each division of the reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts. All the divisions of a reissue will issue simultaneously. If there be controversy as to one, the other will be withheld from issue until the controversy is ended.

**In all cases** of applications for reissues, the original claim, if reproduced in the amended specification, is subject to re-examination, and may be revised and restricted in the same manner as in original applications; but if any reissue be refused, the original patent will, upon request, be returned to the applicant.

**Disclaimers.**—Whenever, by inadvertence, accident, or mistake, the claim of invention in any patent is too broad, embracing more than that of which the patentee was the original or first inventor, some material or substantial part of the thing patented being truly and justly his own, the patentee, his heirs or assigns, whether of a whole or of a sectional interest, may make disclaimer of such parts of the thing patented as the disclaimant shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office.

**Extensions.**—Power is vested in the commissioner to extend any patent granted prior to March 2, 1861, for seven years from the expiration of the original term; but no patent granted since March 2, 1861, can be extended.

**Designs.**—A patent for a design may be granted to any person, whether citizen or alien, who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief: any new and original design for the printing of woollen, silk, cotton, or other fabrics, any new and original impression, ornament, pattern, print, or



picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries.

**Patents for designs** are granted for the term of three and one half years, or for the term of seven years, or for the term of fourteen years, as the said applicant may elect in his application. If granted prior to March 2, 1861, and unexpired, they may be extended for seven years, in the same manner as patents for inventions.

The petition, oath, specification, and other proceedings in the case of applications for letters-patent for a design are the same as for other patents.

When a work of design can be sufficiently represented by a drawing, a model will not be required.

**Photographs** are received for the illustration of works of design only. One must be pasted upon thick drawing paper, but in every case where this mode of illustration is employed by an applicant he will be required to deposit in the office the glass or other "negative" from which the photograph is printed, so that exact official copies may be made therefrom when desirable.

**Trade-Marks.**—Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements, to wit:

First. By causing to be recorded in the patent office

the names of the parties, and their residences and place of business, who desire the protection of the trade-mark.

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

Third. A description of the trade-mark itself, with fac-similes thereof and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trade-mark has been used.

Fifth. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the commissioner of patents.

Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has a right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.

Such trade-mark shall remain in force for thirty years, and may be renewed for thirty years more, except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period; in which case it shall cease to have force in this country at the same time that it becomes of no effect elsewhere.

No proposed trade-mark will be received or recorded which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and al-

ready registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public; but any lawful trade-mark already lawfully in use may be recorded.

Five duplicate copies of the proposed trade-mark; in addition to the one accompanying the statement and oath of applicant, must be deposited with each application. Certified copies will be furnished at the usual rates.

The right to the use of any trade-mark is assignable by any instrument of writing, and such assignment must be recorded in the patent office within sixty days after its execution. The fees will be the same as are prescribed for recording assignments of patents.

**Foreign Patents.**—The taking out of a patent in a foreign country does not prejudice a patent previously obtained here, nor does it prevent obtaining a patent here subsequently, unless the invention shall have been introduced into public use in the United States *for more than two years* prior to the application; and *provided*, that the patent shall expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term; but in no case shall it be in force more than seventeen years.

When application is made for a patent for an invention which has been already patented abroad, the inventor will be required to make oath that, according to the best of his knowledge and belief, the same has not been in public use in the United States for more than two years prior to the application in this country.

An applicant whose invention has been patented abroad should state the fact that a foreign patent has actually been obtained, giving its date, and if there be more than one, of the one having the shortest term.

**Caveats.**—Any citizen of the United States, or alien who has resided for one year last past in the United States, and has made oath of his intention to become a citizen thereof, can file a caveat in the secret archives of the patent office on the payment of a fee of ten dollars therefor. And if, at

any time within one year thereafter, another person applies for a patent for the same invention, the caveator will be entitled to notice to file his application, and to go into interference with the applicant for the purpose of proving priority of invention and obtaining the patent if he succeed. He must file his application within three months from the day on which the notice to him is deposited in the post-office at Washington, adding the regular time for the transmission of the same to him; and the day when the time for filing expires shall be mentioned in the notice or indorsed thereon.

The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of filing the caveat; but he may renew his caveat at the end of one year by paying a second caveat fee of ten dollars, which will continue it in force for one year longer. and so on from year to year as long as the caveator may desire.

No caveat can be filed in the secret archives of the office unless accompanied by an oath of the caveator that he is a citizen of the United States, or, if he is an alien, that he has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof; nor unless the applicant also states, under oath, that he believes himself the original inventor of the art, machine, or improvement set forth in his caveat.

A caveat need not contain as particular a description of the invention as is requisite in a specification; but still the description should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed.

Caveat papers cannot be withdrawn from the office nor undergo alteration after they have once been filed; but the caveator, or any person properly authorized by him, can at any time obtain copies of the caveat papers at the usual rates.

When practicable, the caveat must be accompanied by drawings or sketches.

**Assignments.**—A patent may be assigned, either as to the whole interest or any undivided part thereof, by any instrument of writing. No particular form of words is necessary to constitute a valid assignment, nor need the instrument be sealed, witnessed, or acknowledged.

A patent will, upon request, issue directly to the assignee or assignees of the entire interest in any invention, or to the inventor and assignee jointly, when an undivided part only of the entire interest has been conveyed.

In every case where a patent issues or reissues to an assignee the assignment must be recorded at the patent office at least five days before the issue of the patent, and the specification must be sworn to by the inventor.

When the patent is to issue in the name of the assignee the entire correspondence should be in his name.

The patentee may grant and convey an exclusive right under his patent to the whole or any specified portion of the United States, by an instrument in writing.

Every assignment or grant of an exclusive territorial right must be recorded in the patent office within three months from the execution thereof; otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice; but, if recorded after that time, it will protect the assignee or grantee against any such subsequent purchaser, whose assignment or grant is not then on record.

The patentee may convey separate rights under his patent to make or to use or to sell his invention, or he may convey territorial or shop rights which are not exclusive. Such conveyances are mere licenses, and need not be recorded.

The receipt of assignments is not generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to the persons entitled to them. A five-cent revenue stamp is required for each sheet or piece of paper on which an assignment, grant, or license may be written.

**Office Fees, and How Payable.**—Nearly all the fees payable to the patent office are positively required by law

to be paid in advance, that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

The following is the tariff of fees established by law:

On filing every application for a design, for three years and six months.....	\$10 00
On filing every application for a design, for seven years.....	15 00
On filing every application for a design, for fourteen years.....	30 00
On filing every caveat.....	10 00
On filing every application for a patent.....	15 00
On issuing each original patent.....	20 00
On filing a disclaimer.....	10 00
On filing every application for a reissue.....	30 00
On filing every application for a division of a reissue.....	30 00
On filing every application for an extension.....	50 00
On the grant of every extension.....	50 00
On filing the first appeal from a primary examiner to examiners-in-chief.....	10 00
On filing an appeal to the commissioner from examiner-in-chief.....	20 00
On depositing a trade mark for registration.....	25 00
For every copy of a patent or other instrument, for every one hundred words.....	0 10
For every certified copy of drawing, the cost of having it made.....	
For copies of papers not certified, the cost of having them made.....	
For recording every assignment of three hundred words or under.....	1 00
For recording every assignment, if over three hundred and not over one thousand words.....	2 00
For recording every assignment, if over one thousand words.....	3 00

The final fee on issuing a patent must be paid within six months after the time at which the patent was allowed, and

notice thereof sent to the applicant or his agent. And if the final fee for such patent be not paid within that time, the patent will be forfeited, and the invention therein described become public property; as against the applicant therefor, unless he shall make a new application therefor; unless he shall make a new application therefor within two years from date of the original allowance.

The money for the payment of fees may be paid to the commissioner, or to the treasurer, or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the secretary of the treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to this office. When this cannot be done without much inconvenience, the money may be remitted by mail, and in every case the letter should state the exact amount inclosed. Letters containing money may be registered. Post-office money-orders now afford a safe and convenient mode of transmitting fees. All such orders should be made payable to the commissioner of patents.

All money sent by mail, either to or from the patent office, will be at the risk of the owner. In no case should money be sent inclosed with models. All payments to or by the office must be paid in specie, treasury notes, national bank notes, certificates of deposit, or post-office money-orders.

**Repayment of Money.**—Money paid by actual mistake will be refunded; but a mere change of purpose after the payment of money will not entitle a party to demand such return.

**Rules of Correspondence.**—All correspondence must be in the name of the "commissioner of patents," and all letters and other communications intended for the office must be addressed to him. If addressed to the acting or assistant commissioner, chief clerk, examiners, or any of the other officers, they will not be noticed, unless it should be seen that the mistake was owing to inadvertence. *A separate*

*letter should in every case be written in relation to each distinct subject of inquiry or application, the subject of the invention and the date of filing being always carefully noted.*

**When an agent has filed his power of attorney, duly executed, the correspondence will, in ordinary cases, be held with him only. A double correspondence with him and his principal, if generally allowed, would largely increase the labor of the office. For the same reason, the assignee of an entire interest in an invention is entitled to hold correspondence with the office, to the exclusion of the inventor. If the principal becomes dissatisfied, he must revoke his power of attorney and notify the office, which will then communicate with him.**

**All communications to and from the commissioner upon official business are carried in the mail free of postage.**

**After a second rejection none of the papers can be inspected, save in the presence of a sworn officer; nor will any of the papers be returned to the applicant or agent.**

**Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner in charge will notify each of said principal parties of this fact, and also the attorney.**

**Aside from the caveats, which are required by law to be kept secret, all pending applications are, as far as practicable, preserved in like secrecy. No information will, therefore, be given those inquiring whether any particular case is before the office; or whether any particular person has applied for a patent.**

**But information is given in relation to any case after a patent has issued, or after a patent has been refused, and the further prosecution of the application is abandoned or barred by lapse of time.**

**The models, in such cases, are so placed as to be subject to general inspection. The specifications and drawings in any particular case can be seen by any one having particular occasion to examine them; and copies thereof, as well as of patents granted, will be furnished at the cost of making them. Copies will be made on parchment, at the request of the applicant, on his paying the additional cost.**



**Even after a case is rejected, the application is regarded as pending, unless the applicant allows the matter to rest for two years without taking any further steps therein, in which case it will be regarded as abandoned, and will no longer be protected by any rule of secrecy. The specifications, drawings, and model will then be subject to inspection in the same manner as those of patented or withdrawn applications.**

**Information in relation to pending cases is given so far as it becomes necessary in conducting the business of the office; but no further. Thus, when an interference is declared between two pending applications, each of the contestants is entitled to a knowledge of so much of his antagonist's case as to enable him to conduct his own understandingly.**

**The office cannot respond to inquiries as to the novelty of an alleged invention in advance of an application for a patent; nor upon inquiries founded upon brief and imperfect descriptions, propounded with a view of ascertaining whether such alleged improvements have been patented; and, if so, to whom; nor can it act as an expounder of the patent law; not as counselor for individuals; except as to questions arising within the office. A copy of the rules, with this section marked, sent to the individual making an inquiry of the character referred to, is intended as a respectful answer by the office.**

**All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be predicated exclusively on the written record. No attention will be paid to any alleged verbal promise or understanding in relation to which there is any disagreement or doubt.**

**Attorneys and Agents.**—Any person of intelligence and good moral character may appear as the attorney in fact or agent of an applicant, upon filing a proper power of attorney. As the value of patents depends largely upon the careful preparation of the specification and claims, the assistance of competent counsel will, in most cases, be of advantage to the applicant; but the value of their services will be pro-

portioned to their skill and honesty. So many persons have entered this profession of late years without experience, that too much care cannot be exercised in the selection of a competent man. The office cannot assume responsibility for the acts of attorneys, nor can it assist applicants in making a selection. It will, however, be a safe rule to distrust those who boast of the possession of special and peculiar facilities in the office for procuring patents in a shorter time or with more extended claims than others.

**Powers of Attorney** must contain a clause of substitution; to authorize the attorney to substitute for, or associate with himself, a second agent; but such powers will not authorize the second agent to appoint a third.

**A power of attorney** must be filed in every case, both by original and associate attorneys, before such attorney will be allowed to inspect papers or take action of any kind; but a revenue stamp need be affixed to original powers only.

#### FORMS PRESCRIBED BY THE PATENT OFFICE.

##### *Petition by a Sole Inventor.*

To the commissioner of patents:

Your petitioner prays that letters-patent may be granted to him for the invention set forth in the annexed specification.

.....

##### *Petition by Joint Inventors.*

To the commissioner of patents :

Your petitioners pray that letters-patent may be granted to them, as joint inventors, for the invention set forth in the annexed specification.

.....

##### *Petition by an Inventor, for an Assignee.*

To the commissioner of patents:

Your petitioner prays that letters-patent may be granted to ...., as his assignee, for the invention set forth in the annexed specification.

.....

##### *Petition by an Administrator.*

To the commissioner of patents :

Your petitioner, ...., administrator of the estate of ...., deceased, (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear,) prays that letters-patent may

be granted to him for the invention of the said ...., set forth in the annexed specification.

....., administrator, etc.

*Petition by an Executor.*

To the commissioner of patents :

Your petitioner, ...., executor of the last will and testament of ...., deceased, (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear,) prays that letters-patent may be granted to him for the invention of the said ...., set forth in the annexed specification.

....., executor, etc.

*Petition for a Re-issue (by the Inventor).*

To the commissioner of patents :

Your petitioner prays that he may be allowed to surrender the letters-patent for an improvement in coal scuttles, granted to him ....., 18..., whereof he is now sole owner, [or, "whereof ....., on whose behalf and with whose consent this application is made, is now sole owner, by assignment,] and that letters-patent may be re-issued to him for the same invention, upon the annexed amended specification.

.....

*Petition for Letters-Patent for a Design.*

To the commissioner of patents :

Your petitioner prays that letters-patent may be granted to him for the new and original design set forth in the annexed specification.

.....

*Power of Attorney.*

To the commissioner of patents :

The undersigned having, on or about the ..... day of ....., 18..., made application for letters-patent for an improvement in a horse-power. hereby appoints ...., of the city of ....., his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

Signed at ....., county of ....., and state of ....., this .... day of ....., A. D. 18...

.....

*Specifications for a Machine.*

I, ...., of ....., in the county of ....., and state of ....., have invented certain improvements in planing machines, of which the following is a specification :

The first part of my invention relates to the combination of rotary cutters and feeding-rollers, in such a manner that the said feeding-rollers shall be capable of feeding the lumber to the cutters, and also of effectually resisting

the tendency of the cutters to draw the lumber upward toward them ; the object of this part of my invention being to reduce the lumber operated upon to a uniformity of thickness, and to give it a planed and even surface upon one side thereof.

The second part of my invention relates to the combination, with feeding-rollers and rotary cutters, for planing one of the principal surfaces of the lumber, of rotary machine cutters so as to form a tongue or groove, or both, upon the edge or edges of the lumber, at the same time that one of its principal surfaces is planed.

Figure 1 is a side elevation of a machine embodying my invention.

Figure 2 is a plan of the same.

Figure 3 is an elevation showing that end of the machine which is at the right hand of Figure 1.

Figure 4 is a vertical transverse section, showing those parts of the machine which are at the right hand of the line *xx* drawn across Figures 1 and 2.

*A* is the frame of the machine, which frame should be substantially constructed, to resist the vibrations of the operating parts. *B* is the driving pulley, which is hung on the main shaft *C* of the machine, from which latter, motion is communicated to the operating parts. *D* is the shaft of the rotary cutters by which the lumber is planed. This shaft is made flat upon two of its sides, between its bearings, for the reception of the cutters *E E*, which are firmly secured to it by bolts *a a*, the holes through these cutters for the reception of these bolts being elongated in the direction of the width of the cutters, to allow the necessary adjustment of the cutters. The shaft *D* is hung in adjustable bearings, by which it may be elevated and depressed to regulate the thickness of the planed lumber. *F* is a pulley on the shaft *D*, which receives motion by belt *G*, from the band wheel *H*, on the driving shaft. *I I* and *J J* are the feeding rollers, each pair of which is connected by finger pinions *b b*, and the upper roller of each pair is hung in spring bearings, which allow it to yield slightly upward to pressure, to adapt it to any differences or inequalities in the thickness of the lumber. The lower roller of each pair is provided with a worm wheel *c*, which meshes into a worm or endless screw *d* on the shaft *k*, which is propelled by a bevel wheel *l* on the main shaft, working into the bevel wheel *f* on the shaft *k*. *L* and *M* are cutters hung on vertical shafts *N* and *O*, one set of these cutters being adapted to form a groove, and the other to form a tongue upon the edge of the board to be operated upon. These cutters are attached to the shafts in the manner already described with relation to the cutters *E E*. The shafts *N* and *O* are provided with pulleys *g g*, and rotation is communicated to them by belts *h h* from pulleys *i i*, on the main shaft ; rotation being given in the direction of the arrow to the driving pulley. The lumber to be planed is introduced from the end of the machine, which is shown at the right hand in figures 1 and 2, and being grasped by the rollers *I I*, is by them drawn forward to the cutters *E E*, which being rapidly revolved toward the advancing lumber, plane it to the proper thickness ; and as the lumber continues to advance, it is grasped by the rollers *J J*, which aid in the feeding motion, and discharge the board after it has passed the cutters. The upper rollers *I* and *J*, being hung in spring bearings, always exert a pressure on the top

of the board, and prevents its being raised by the action of the cutters E E. When the lumber is designed for floors or ceilings, or other purpose for which it is required to be matched, a tongue is formed upon one edge of it, and a groove in the other, by the cutters L and M, which both revolve toward the advancing board; and these operations are performed at the same time that the upper surface of the board is planed, the whole being done at a single operation. When the lumber is required to be matched, it should be first reduced to a uniform width, and guided into its introduction into the machine by a gauge P attached to the bed Q of the machine. When the lumber is not to be matched, this gauge and the cutters L and M should be taken off and dispensed with.

I claim as my invention—

1. The combination of the cutters E E and the feeding rollers I I and J J, substantially as and for the purpose hereinbefore set forth.

2. The combination with the cutters E E and feeding rollers I I and J J, of the cutters L and M, substantially as and for the purposes hereinbefore set forth.

Witnesses: .....

.....

*Specification for a Process.*

We, ....., of ....., county of ..... and state of ....., and .... of ....., county of ....., and state of ....., have invented a certain process for separating smut, and all impurities, from wheat, of which the following is a specification:

Take of lime newly slacked, and while yet warm, one and a half pounds to each one hundred pounds of wheat. Mix the lime well with the wheat, let it stand one hour, then pass it through a smut-mill in the usual way, and it will be found that all the lime, smut, dirt, and other impurities, attached to the wheat, of every kind, and which no smut-mill, without my liming process, will fully separate, will be entirely removed, and the flour will be as white and as sweet as though made from the best of wheat.

We do not claim the smut-mill, or any improvement thereon, or any new chemical quality of lime.

We claim as our invention the process of applying lime, when newly slacked and warm, to wheat, before passing the latter through a smut-mill, so as to cleanse the wheat from all impurities, substantially as described

Witnesses: .....

.....

*Specification for a Composition of Matter.*

...., deceased, late of ....., in the district of ....., and state of ....., during his lifetime invented a certain compound called "wool oil," to be used instead of lard, rape-seed, or other oils, in the manufacture of wool.

The nature of the invention of the said ..... consists in mixing olive, lard, or rape-seed oil with a solution of oil of soap dissolved in hot water.

To prepare the wool oil, take a quantity of oil soap of any kind, provided the quality be good, and dissolve the same in hot water, say about thirty

pounds of oil soap to thirty gallons of water, or a sufficient quantity of soap to saturate the water. Then take equal parts by measure, of olive, lard, rape-seed, or any other kind of oil which can be used on wool in the process of its manufacture, and mix it with the preparation aforesaid, to wit, the soap solution, which, after such mixture, is ready to be used on the wool with as beneficial an effect as if pure oil only had been used. This wool oil will not decompose by age, because the oil of soap neutralizes the stearine in the oil; hence there is nothing to decompose. And for the same reason spontaneous combustion cannot be produced.

I claim as the invention of the said . . . . . the manufacture or preparation of a compound, which is denominated wool oil, of the ingredients, in the proportions, and for the purposes set forth.

Witnesses ; . . . . .  
 . . . . .

.....  
 Administrator.

*Specification for a Design.*

I, . . . . ., of . . . . ., in the county of . . . . ., and state of . . . . ., have invented and produced a new and original design for carpets, of which the following is a specification :

The nature of my design is fully represented in the accompanying photographic illustration, to which reference is made.

I claim as my invention the design for a carpet, as shown.

Witnesses : . . . . .  
 . . . . .

*Oath by a Sole Inventor.*

State of . . . . ., }  
 county of . . . . . } ss.

. . . . ., the above named petitioner, being duly sworn, [or affirmed,] deposes and says that he verily believes himself to be the original and first inventor of the improvement in seed drills described in the foregoing specification; that he does not know and does not believe that the same was ever before known or used; and that he is a citizen of the United States.

Sworn to and subscribed before me this . . . . day of . . . . ., 18...

.....  
*Justice of the Peace.*

[If the applicant be an alien, the sentence "and that he is a citizen of the United States" will be omitted, and in lieu thereof will be substituted "and that he is a citizen of the republic of Mexico," or, "and that he is a subject of the King of Italy," or, "of the Queen of Great Britain," or, as the case may be. If the applicants claim to be *joint inventors*, the oath will read "that they verily believe themselves to be the original, first, and joint inventors," etc.]

*Oath by an Applicant for a Re-issue (inventor).*

State of . . . . ., }  
 city and county of } ss.

. . . . ., the above-named petitioner, being duly sworn, (or affirmed,) deposes and says that he verily believes that, by reason of an insufficient

and defective specification, his aforesaid letters-patent are inoperative and invalid ; that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief, that he is the sole owner of said letters-patent ; [or, "that ..... is the sole owner of said letters-patent, and that this application is made on the behalf and with the consent of the said .....;" ] and that he verily believes himself to be the first and original inventor of the improvement set forth in this amended specification.

Sworn to and subscribed before me this .... day of ....., 18...

..... [L. s.]

*Notary Public.*

*Caveat.*

The petition of ..... of ....., in the county of ....., and state of ....., respectfully represents, that he has made certain improvements in velocipedes, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to applying for letters-patent therefor. He, therefore, prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the patent office.

*Specification*

The following is a description of my newly-invented velocipede, which is as full, clear, and exact as I am able at this time to give, reference being had to the drawing hereto annexed. This invention relates to that class of velocipedes in which there are two wheels connected by a beam, forming a saddle for the rider, the feet being applied to cranks that revolve the front wheel. The object of my invention is to render it unnecessary to turn the front wheel as much as heretofore, and at the same time to facilitate the turning of sharp curves. This I accomplish by fitting the front and the hind wheels on vertical pivots, and connecting them by means of a diagonal bar, as shown in the drawing, so that the turning of the front wheel also turns the back wheel with a position at an angle with the beams, thereby enabling it easily to turn a curve. In the drawing, A is the front wheel, B the hind wheel, and C the standards extending from the axle of the front wheel to the vertical pivot *a* in the beam *b*, and D is the cross-bar upon the end of *a*, by which the steering is done. The hind wheel B is also fitted with jaws *c* and a vertical pivot *d*.

Witnesses : .....

[The form of oath will be substantially that provided for original applications, except that, as a caveat can only be filed by a citizen, or an alien who has resided for one year last passed in the United States, and made oath of his intention to become a citizen, the oath should be modified accordingly.]

*Assignment of the entire interest in an invention before the issue of letters-patent.*

In consideration of one dollar to me paid by ..... of ....., I do hereby sell and assign to said ..... all my right, title, and interest in and to a certain invention in plows, as fully set forth and described in the

specification which I have prepared [if the application has been already made, say "and filed"] preparatory to obtaining letters-patent of the United States therefor. And I do hereby authorize and request the commissioner of patents to issue the said letters-patent to the said . . . . ., as my assignee, for the sole use and behoof of the said . . . . . and his legal representatives.

Witness my hand this . . . . day of . . . . ., 18...

.....

*Of the entire interest in letters-patent.*

In consideration of five hundred dollars to me paid by . . . . ., of . . . . ., I do hereby sell and assign to the said . . . . . all my right, title, and interest in and to the letters-patent of the United States No. . . . ., for an improvement in locomotive head-lights, granted to me . . . ., 18.., the same to be held and enjoyed by the said . . . . . to the full end of the term for which said letters are granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand this . . . . day of . . . ., 18..

.....

*Of an undivided interest in the letters-patent and extension thereof.*

In consideration of one thousand dollars to me paid by . . . . ., of . . . . ., I do hereby sell and assign to the said . . . . . one undivided . . . . part of all my right, title, and interest in and to the letters-patent of the United States No. . . . ., for an improvement in cooking-stoves, granted to me . . . ., 18.., the same to be held and enjoyed by the said . . . . . to the full end of the term for which said letters-patent are granted, and for the term of any extension thereof, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand this . . . . day of . . . ., 18..

.....

*Exclusive territorial grant by an assignee.*

In consideration of one thousand dollars to me paid by . . . . ., of . . . . ., I do hereby grant and convey to the said . . . . . the exclusive right to make, use, and vend within the State of . . . . ., and the counties of . . . . . and . . . . . in the State of . . . . ., and in no other place or places, the improvement in corn planters for which letters-patent of the United States, dated . . . ., 18.., were granted to . . . . ., and by said . . . . assigned to me . . . ., 18.., by an assignment duly recorded in liber . . . ., p. . . ., of the records of the patent office, the same to be held and enjoyed by the said . . . . . as fully and entirely as the same would have been held and enjoyed by me if this grant had not been made.

Witness my hand this . . . . day of . . . ., 18..

.....

*License—shop right.*

In consideration of . . . . dollars to be paid by the firm of . . . . ., of . . . . ., I do hereby license and empower the said . . . . . to manufacture,



at a single foundry and machine shop in said ....., and in no other place or places, the improvement in cotton-seed planters, for which letters-patent of the United States, No. ...., were granted to me ...., 18., and to sell the machines so manufactured throughout the United States, to the full end of the term for which said letters-patent are granted.

Witness my hand this .... day of ...., 18..

.....

*License—not exclusive—with royalty.*

This agreement, made this .... day of ...., 18., between ...., party of the first part, and the ...., party of the second part, witnesseth that whereas letters-patent of the United States for an improvement in horse rakes were granted to the party of the first part, dated ...., 18.; and whereas the party of the second part is desirous of manufacturing horse rakes containing said patented improvement; now, therefore, the parties have agreed as follows: I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in ....., and in no other place or places, to the end of the term for which said letters-patent were granted, horse rakes containing the patented improvements, and to sell the same within the United States. II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the .... days of .... and .... in each year, of all horse rakes containing the patented improvements manufactured by them. III. The party of the second part agrees to pay to the party of the first part five dollars, as a license fee upon every horse rake manufactured by said party of the second part, containing the patented improvements; provided that, if the said fee be paid upon the days provided herein for semi-annual returns, or within ten days thereafter, a discount of fifty per cent. shall be made from said fee for prompt payment. IV. Upon failure of the party of the second part to make returns, or to make payment of license fees, as herein provided, for thirty days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named have hereunto set their hands this day and year first above written.

.....

.....

By .....

*President.*

*Transfer of a trade mark.*

We, .... and ...., of ....., partners under the firm name of ...., in consideration of .... dollars, to us paid by ...., of the same place, do hereby sell, assign, and transfer to the said .... and his assigns the exclusive right to use in the manufacture and sale of stoves a certain trade-mark for stoves deposited by us in the United States patent office,

and recorded therein . . . . , 18. . ; the same to be held, enjoyed, and used by the said . . . . . as fully and entirely as the same would have been held and enjoyed by us if this grant had not been made.

Witness our hands this . . . . day of . . . . , 18. .

.....  
.....

## PAWNBROKERS.

**Pawnbrokers.**—The following is applicable to California alone. Oregon, Nevada and Idaho, have no laws on the subject :

**Register Book.**—Every person or firm engaged in the business of pawnbroker or pledgee of the purchase or sale of second-hand clothing, wares or merchandise, shall keep a register book, of the size known by stationers as "six quarto, extra cap," in which shall be made an entry with ink in the English language, at the time of loan, pledge or purchase, a true and accurate account and description of every article of property pledged or purchased, the name and residence of the pledgeor or vendor, the date, duration, amount and rate of interest, of every loan made, or the date or hour of purchase of any property purchased, and shall, if any loan be made or property pledged, at the time of the loan or pledge, deliver to the pledgeor a written or printed memorandum, signed by him, her or them, containing a copy of said entry, and shall in like manner keep an account of all sales made by him, her or them.

**Rate of Interest.**—The rate of interest or percentage, which shall be lawfully charged by any pawnbroker or pledgee shall not exceed four per cent. per month, in advance, on all loans exceeding twenty dollars, which shall include all charges for discount, commissions, storage, brokerage, wasting, and all and every charge or charges thereupon ; nor shall said interest at any time be compounded.

\* If you withdraw your application, inclose a receipt in the following form :

Received of the treasurer of the United States, per hon. . . . . , commissioner of patents, . . . . dollars, being the amount refunded on withdrawing my application for a patent for . . . .

**Liabilities.**—Any pawnbroker or pledgee who shall, directly or indirectly, charge or receive any interest greater than four per cent. per month, or by charging commissions, discount, brokerage, storage, wastage or other charge, or shall attempt to increase said interest or shall compound said interest, shall forfeit three times the value of the article pledged or to be pledged, to be recovered by the owner or pledgeor in a civil action, which may be brought by the party aggrieved.

**When to Sell.**—No pawnbroker or pledgee shall sell or dispose of any article pledged to them and unredeemed, until it has remained in his, her or their, possession six months after the last day of redemption, and all such sales shall be at public auction, upon notice of five days, published in some newspaper printed at the place where the sale takes place, and, if no newspaper is there printed, then by posting notices in two public places five days before the sale, giving the place where the articles will be sold and a list of said articles, which sales shall in all take place in the town or city where such articles are pledged.

**Disposition of Proceeds of Sale.**—After deducting from the proceeds of any sale as aforesaid the amount of the loan, the interest then due as herein provided, and four per cent. on the loan additional for the expenses of the sale, such pawnbroker or pledgee shall pay the balance to the person entitled to redeem such property if no sale had been made, and, if not so paid on demand, three times the amount thereof shall be forfeited, to be recovered by the owner or pledgeor in a civil action to be brought by him therefor.

**To Exhibit the Register Book.**—Every pawnbroker or pledgee, or purchaser or seller of second-hand clothing, wares or merchandise, shall exhibit his, her or their, register book, and all articles received in pledge or purchase by him, her or them, and his, her or their, accounts, purchases or sales, to any sheriff, constable or police officer, possessing the necessary writ or warrant to search for per-

sonal property. It shall be the duty of every pawnbroker or pledgee, or any purchaser or seller of second-hand clothing, wares or merchandise, to produce his, her or their, register book for inspection to any sheriff, constable or police officer, whenever so required by the order of any committing magistrate of the county, and such order may be made by such magistrate whenever he shall deem it expedient for the purpose of ascertaining the place of concealment of any stolen property.

**Penalty.**—Every pawnbroker, pledgee or purchaser or seller, of second-hand clothing, wares or merchandise, who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and shall be fined in a sum not less than fifty nor exceeding five hundred dollars, or imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

#### FORMS.

##### *Receipt for Property Pledged*

Received of .... one .... watch, No. ...., maker, ...., as security for the sum of .... dollars, loaned by .... to the said .... Said money is loaned by the said .... for .... days from date, and the interest is to be .... per cent. per ....

[Signed] .....

Dated ...., 18..

##### *Notice of Sale.*

Notice is hereby given that the undersigned, a pawnbroker, doing business at No. ...., state of ...., will sell at public auction, on said premises, for cash, on the .... day of ...., 18.., at the hour of ...., the following described unredeemed pledges on deposit at my said place of business, viz:

One ... hunting watch No. ...., maker, ....; one .... finger ring, .... set and chased; one .... open-faced watch, .... make, No. ....; one .... pair gentlemen's false calves, .... filling; one bundle auburn, ladies' back hair; two sets false teeth, etc.

.....,  
Pawnbroker.

Dated ...., 18..

##### *Order of Magistrate to Exhibit.*

State of ..... }  
county of ..... }

To ...., pawnbroker: It appearing to my satisfaction from the affi-

davit [or, "other evidence"], that there are reasonable grounds to believe that the following described personal property is concealed on your said premises, viz : [here describe property]; and it seeming expedient to me, you are hereby ordered to forthwith produce your register-book for the inspection of a . . . . . [policeman or other officer].

Hereof fail not. Given under my hand this . . . day of . . . , 18..

.....

Justice of the peace [or, other committing magistrate].

## PAYMENT.

**Payment, Evidence of.**—A receipt is on its face evidence of payment. That is its highest character, as it may be shown that the particular sum stated in the receipt was not paid, and also that no payment has been made. See RECEIPTS.

**A Receipt for last year's or month's rent,** is *prima facie* evidence of the payment of all the rents previously due. If the last installment of a bond is paid in due form it is evidence that the others have been paid.

**Who may Make Payment.**—Payment may be made at any time after the debt is due by the principal debtor, his agent or attorney. An attorney at law may discharge a debt against his client. One of any number of joint debtors may pay a debt.

**To Whom Payment may be Made.**—Payment may be made to the creditor or to his agent. If made to the agent in the ordinary course of business, without notice requiring payment to be made to the principal, it is binding. Payment to an attorney is as effectual as payment to the principal himself. If a judgment is paid to an attorney within one year from its date he may satisfy it. Payment to the wife of the creditor is good if she is expressly or by implication his agent.

**When to be Made.**—Payment must be made at the exact time agreed upon. Where a time is set for payment, of course nothing can be demanded until the time of payment, and if there be a condition precedent to the liability, not until the condition has been performed. When

goods are sold at "six or nine months' credit" or the like, to debtor, he will be allowed the option.

**Where no Time of payment is specified,** the money is to be paid immediately, and no demand need be made before suit.

**Where to be Made.**—Payment must be made at the place agreed upon, unless both parties consent to a change. If no place of payment is mentioned the payer must seek out the payee.

**Effect of Payment.**—Payment, of course, discharges the debt. Part payment discharges the debt *pro rata*. Where a debtor owes two or more debts to the same creditor, he may direct any particular payment to be applied towards the extinguishment of either debt he may select. If he give no directions the creditor may apply the payment as he chooses. If the debtor give no directions and the creditor makes no selection, but gives the debtor no special credit on either demand, the law will direct the payment to be applied on the oldest debt.

**In most Countries** part payment of a debt will stop the running of the statute of limitation; but the rule is otherwise in California.

**Part Payment.**—See RECEIPTS.

## PERSONAL PROPERTY.

**Personal Property.**—The essential idea of personal property is that of property in a thing movable or separable from real property. It is safe to say, as a general rule, that personal property is that which is not attached *permanently* to the ground.

## PLEDGE.

**Pledgee and Pledgeor.**—A pledgee of personal property is a person who has loaned money or given credit for goods purchased, on the security of certain personal property deposited with him by the borrower or debtor, who is termed the pledgeor.

**Duty and Obligation of Pledgee.**—A pledgee is bound to take ordinary care of the thing pledged, and if it be lost or injured or destroyed for want of such care, he is answerable for its value. By ordinary care, is meant the same care a prudent man of business would take of his own property of similar nature. He must not make use of it, except at his own risk. In other words, he is liable for any injury caused by using it. If the thing pledged—as a cow—needs use for its safety, then the pledgee may milk it for this purpose, and is liable only for an injury caused by his negligence. In such case, should the cow be injured because it was not milked, he is liable. He must account to the pledgeor for the income, increase or profits, over and above the cost of keeping.

**Possession of Pledge.**—One difference between a mortgagee and pledgee, is this: A mortgagee need not take possession, for the mortgagor may retain it [as will be seen by consulting the statutory provisions under the head MORTGAGES], by recording and acknowledging the mortgage, but only in such cases as are mentioned in the statute.

**Pledgee may not sell Pledge before the Debt is due.**—A most important difference between a mortgage and pledge is this: A mortgagee may sell or transfer his mortgage, and his assignee may sell and transfer it again, and when the debt is satisfied the mortgagor may reclaim it from whomsoever has it then. On the other hand, if the pledgee sells the thing pledged before the debt is due, it is held by the courts that he is answerable to the pledgeor for its value, although the debt be not paid. If A lends money to B, and takes stock in pledge, A cannot sell this stock and keep the proceeds and replace the stock and return it when the debt is paid. He can do nothing but *keep the identical stock*; and if he disposes of it, the pledgeor may recover its full value, and the pledgee will have no security for his debt. In such a case, which arose in New York in 1867, a pledgee, being sued, offered the testimony of stock-brokers and others to prove a “uniform and established usage in the city of New York, to sell or use pledged stock un-

til the debt was paid ;" but the court ruled the usage if, such there was was illegal, and refused to receive the evidence. This decision is undoubtedly on the ground that the *identical* property deposited as security is pledged, and when the pledgee disposes of it, he has violated his contract and placed it out of his power to return what he received ; and the *price of it or its value* not having been pledged to him, he must restore this to the true owner. These transactions are to be considered as voluntary surrendering of the security, and he who has surrendered it cannot complain.

**Foreclosure of Lien.**—After the debt is due and payable the pledgee may have a decree in equity for a sale of the pledge, or he may sell it himself, provided he first gives a reasonable notice to the pledgeor, and then sells it in a proper manner, by a public sale at auction, and uses all reasonable precautions to get its full value, and does not buy it himself, directly or indirectly, and conducts himself in all respects honestly ; and he must account for the proceeds after his debt is paid.

**Sale of Pledge.**—The parties may agree when the pledge is given or afterwards, how the pledge shall be sold if not redeemed ; and such agreements, if fair, would undoubtedly be binding on everybody.

**When Pledgee Accountable.**—It is always to be expressly understood that the pledgee of *negotiable paper* may sell or discount it before the debt is due ; and he must account for it or its proceeds, if the debt is paid and the paper redeemed, or for the balance if he applies it to payment of the debt.

**Loan of Stock.**—A loan of stock authorizes the borrower to sell or pledge it or use it in any way, but he must replace the same number of shares of the same stock when it is called for. The difference between a pledge and a loan is clear. A loan without the right to use stock would be of no use whatever to the borrower. A pledgee may thus use stock pledged to him by a special agreement which permits its use and not otherwise.



**Difference between a Pledge and Mortgage.**—The great technical difference between a *mortgage* of personal property and a *pledge* of the same, is this: In a mortgage the title vests at once in a mortgagee, subject to be divested upon compliance with the conditions of the mortgage; whereas, in a pledge, the title remains in the pledgeor, until a sale. See PAWNBROKERS and CHATTEL MORTGAGE.

## POSSESSION.

**Possession.**—The detention or enjoyment of a thing which a man holds or exercises by himself or by another, who keeps or exercises it in his name.

**Actual Possession** exists where the thing is in the immediate occupancy of the party.

**Constructive Possession**, is that which exists in contemplation of law, without actual personal occupation. See LIMITATIONS.

## POWER OF ATTORNEY.

**Power of Attorney.**—A power or letter of attorney, as it is frequently called, is an authorization by one person to another, to perform some act for and in the name of the giver of the power or authority. Peter direct or requests Paul to collect all rents due Peter at any place. This is called a special power of attorney to collect rents, and may or may not be in writing. Matthew directs or requests Mark to buy or sell real estate, and perform any act in or about the business and property of all kinds belonging to or in which said Matthew is or may be thereafter interested. This is a general power of attorney; and under it Mark may do any act or thing in the name of Matthew, and in Matthew's business, that Matthew might, could or would do, were he present.

**Affecting Real Estate.**—When it authorizes any act affecting real estate or any act which if done by the principal would require a seal, the power should be under seal.

**Exceeding Authority.**—If the attorney exceeds his au-

thority the principal is not bound by his act; but the authority delegated to him is supposed to include all the necessary means of carrying it into effect.

**Must Act in the Name of the Principal.**—When the attorney performs an act for his principal it must be done in the name of the principal, and all instruments must be so expressed, and must be signed in the name of the principal by the attorney.

**To Convey Real Estate.**—A power of attorney to convey real estate or to execute any conveyance affecting real estate, must be acknowledged or proved, certified and recorded, the same as a deed. To revoke such a power of attorney the deed of revocation must be deposited for record in the same office in which the power of attorney is recorded.

**Revocation of.**—A power may be revoked at the sole pleasure of the principal, except where the attorney or some third party has an interest in the subject matter.

**By Married Woman.**—A married woman may make and execute powers of attorney for the sale, conveyance or incumbrance, of her real or personal estate: *provided*, her husband joins in the execution of the instrument; and any conveyance executed under and by virtue of such power of attorney shall be executed, acknowledged and certified, in the same manner as if the persons making such powers of attorney were unmarried. A married woman shall have the right to revoke such power of attorney, and it shall not be necessary, for the validity of such revocation, that her husband shall join in the execution thereof.

**Substitution of Authority.**—The power of attorney may contain authority to the attorney to appoint a substitute; and such substitute if appointed must act in the name of the principal.

**Effect of Death of Principal.**—The death of the principal revokes a power of attorney; and a person dealing with an attorney in fact, when the principal is in a foreign country or when his whereabouts is uncertain, should act with

great caution, as ruin may follow some important transaction if it should happen that the principal should be dead at the time of the transaction, and even if the greatest good faith is observed, and when all parties were ignorant at the time of the death of the principal. Where considerable interests are involved it is best not to act until it is *certain* the principal is alive.

## OREGON.

In Oregon the statute provides for recording powers of attorney and revocations in the same terms as the California statute.

## FORMS.

*Power of Attorney—Short Form.*

I, ...., hereby appoint and constitute .... my attorney in fact, in my name, place and stead, to [here state what the attorney is authorized to do], with full power to said .... as my attorney to do everything I could in the premises if personally present.

Witness my hand and seal, this .... day of ...., 18..

..... [L.S.]

*Another Form.*

I hereby authorize ...., as my attorney in fact, to sell and transfer for me and in my name, my interest in the ..... in ..... county, located on the ....., with the lease of the land, to whom and on such terms as he deems best, and by such instrument or means as may be agreed on between him and any other parties.

[Date.]

.....

*Power to Collect.*

Know all men by these presents, that I, ...., of the county of ...., state of ....., have made, constituted and appointed, and by these presents do make, constitute and appoint, ...., of ....., my true and lawful attorney, for me and in my name, place and stead, .... to demand, ask for, receive and recover, all and singular, such sums of money, goods, wares, merchandise, debts, dues, choses in action and effects whatsoever, as are now due, payable, belonging or coming, unto me from any person or persons or body or bodies corporate whatsoever, giving and granting authority to sue therefor, in part or in whole, and pursue unto final judgment and execution any process or suit as he may deem expedient for the recovery of the same, with power to sign one or more sufficient undertakings if by law required.

And my person to represent in any court or courts of law, and there to plead for or retain counsel for that purpose, to submit to arbitration or to

compound the same, and to execute good and sufficient receipts and acquittances therefor, and the same to continue in force unless otherwise revoked.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, the .... day of ....., one thousand eight hundred and ....

..... [L.S.]

Signed, sealed and delivered, in presence of

.....

*Power to Collect Debts alone.*

Know all men, etc., .... to demand, ask, sue for, collect and receive, all sums of money, debts, rents, dues, accounts and other demands, of every kind, nature and description, whatever, which are due, owing or payable, to me from any person or persons whomsoever, and to give good and sufficient receipts, acquittances and discharges, therefor, giving and granting, etc.

*Power of Attorney to Sell and Manage Real Estate.*

Know all men by these presents, that I, ...., of the county of ...., state of ...., have made, constituted and appointed, and by these presents do make, constitute and appoint, ...., of the same place, my true and lawful attorney, for me and in my name, place and stead, to enter into and take possession of all real estate that I now own or may hereafter acquire in the state of ...., and to lease the same, from time to time, upon such terms and conditions and for such rent as he may deem expedient, and to collect and receive the rents thereof; and also to sell and convey my said real estate or any part thereof, for such price and upon such terms and credits as he may deem expedient, and also to borrow money for my use upon such terms and interest as he may deem advisable and as security for the repayment of the same, to mortgage and pledge my said real estate or any part thereof. And for the purposes aforesaid, I hereby authorize and empower my said attorney to make, execute and deliver, all requisite leases, deeds, promissory notes, bonds, agreements, mortgages or other instruments, under seal or otherwise, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, the .... day of ....., in the year of our Lord one thousand eight hundred and ....

..... [L.S.]

*Commercial Power, with Authority to Sell, etc., Real Estate.*

Know all men by these presents, that I, ...., of ....., have made, constituted and appointed, and by these presents do make, constitute and appoint, ...., of ....., my true and lawful attorney, for me and in my name and on my behalf, to ask, demand, recover and receive, all and any sum or sums of money, debts, dues, merchandise or effects, due, payable, coming or belonging, or which may at any time be due, payable or belonging, to me from any person or persons whatsoever; to sell all or any part of such goods, merchandise and effects, which may come to his possession or knowledge, on such credit and for such prices as he may deem meet; to purchase any goods, merchandise, specie or other commodities, on my account, for such prices and to such amount as he may deem meet, and the same to sell again for my benefit and on my account for any prices whatsoever, to ship or transport the same or any part thereof on my behalf and account to any port or ports, place or places whatsoever, in any vessel or vessels, and with and to any person or persons whatsoever, and there barter, exchange and dispose of, the same; to insure and cause insurance to be made of such goods, merchandise, specie or other commodities or of any part thereof, at such premiums and for such risks as he may deem meet; to accept any bill or bills of exchange or orders, make and execute any note or notes of hand, bond or bonds or other instruments or contracts, in my name and on my account, to and for any amount which he may deem meet or expedient; to sell, barter, exchange or dispose of, any real estate of which I am now seized or possessed in fee simple or for any less estate, to any person or persons, for any price or in any manner whatsoever, and for these purposes to execute and acknowledge any deed or deeds, lease or leases or other assurance or assurances, with general covenants of warranty against all persons or any other covenants whatsoever, as he may deem expedient; to purchase any real estate on my account, in fee simple or otherwise, at any price or exchange whatsoever, and for these purposes to receive, confirm, make and execute, any contracts, deeds, conveyances or other instruments, whatsoever; to settle and adjust all partnership accounts and demands, and all other accounts or demands now subsisting or which may hereafter subsist between me and any person or persons whatsoever, and submit the same to and decide them by arbitration; to compound for any debts, dues or demands, owing or which may hereafter be owing to me, and to take less than the whole or otherwise to agree for the same, in such manner and on such terms as he, in his discretion, may deem proper; and for all or any of these purposes, to make and execute any releases, compromises, compositions, agreements or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises; to pay and discharge all debts and demands due and payable or which may hereafter become due and payable by me unto any person or persons whatsoever; to enter into any lands or other real estate to which I am or may be entitled, and to recover the possession thereof, and damages for any injury done thereto, and to distrain for rent due thereon, and also to commence and prosecute unto final judgment and execution any suit or suits, action or actions, real, personal or mixed, which he shall deem proper for the recovery, possession or enjoy-

ment, of any matter or thing which is or which may hereafter be due, payable, owing, belonging, accruing or appertaining, to me for or by reason of the premises or any part thereof, and in any such suits or actions for me to appear and plead, before any courts or tribunals having jurisdiction thereof, and all stipulations, undertakings, recognizances and other requisites, in any suits or actions and any question arising on the same, by arbitration or other compromise, and of all receipts and recoveries in the premises, due acquittances and discharges to execute and deliver, and generally to do and perform all matters and things, transact all business, make, execute and acknowledge, all contracts, orders, deeds, writings, assurances and instruments, which may be requisite or proper to effectuate all or any of the premises or any other matter or thing appertaining or belonging to me, with the same powers and to all intents and purposes with the same validity as I could, if personally present [giving and granting unto my said attorney full power to substitute one or more attorney or attorneys under him, my said attorney in or concerning the premises or any part thereof, and the same at his pleasure to revoke]; and hereby satisfying and confirming whatsoever my said attorney [or, his substitute or substitutes] shall and may do, by virtue hereof, in the premises.

In witness whereof, I have hereunto set my hand and seal, this .... day of  
 ...., in the year of our Lord one thousand eight hundred and ....

Signed, sealed and delivered, in presence of ..... [L.S.]  
 .....

*Authority to Receive Legacy, etc.*

Know all men by these presents, that I, ...., of ....., have made constituted and appointed, and by these presents do make, constitute and appoint, ...., of ....., my true and lawful attorney for me and in my name, place and stead, and for my use to ask, demand, sue for, collect, recover and receive, all money and all other property of every nature and kind whatsoever, both real and personal [with power to enter into and take possession of all lands, tenements, hereditaments and real estate, whatever], which may have descended to me as heir of or to which I may be entitled as next of kin of ...., late of ...., state of ...., deceased, my late ...., and to give all necessary receipts, acquittances, releases and discharges, in the law, with or without seal, for the same, and to appear for me in all courts and places and before all officers, tribunals and magistrates, to prosecute, defend, settle and compromise, all suits, actions and proceedings, of every nature and kind in relation thereto, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever necessary and requisite to be done in and on the premises as fully to all intents and purposes as I could or might do.

[Date.] .....

*Stock Powers of Attorney.*

Know all men by these presents, that I, ...., of the county of ..... and state of ....., for value received, have and do hereby grant, bargain,

sell, assign, transfer and set over, unto . . . . ., of . . . . ., . . . . . county, . . . . shares in the capital stock of the . . . . ., of . . . . ., belonging to me and standing in my name on the books of the said . . . . .; and I do hereby constitute and appoint . . . . . my true and lawful attorney irrevocable, to assign and in due form of law transfer the said stock unto the said . . . . . and to do all other lawful acts requisite for effecting the premises, hereby ratifying and confirming all that my said attorney shall do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, the . . . day of . . . ., one thousand eight hundred and . . . .

Sealed and delivered in presence of

. . . . . [L.S.]

. . . . .

#### *Revocation of Power of Attorney.*

Know all men by these presents, that I, . . . . ., of . . . . ., in and by my letter, warrant or power of attorney, bearing date on the . . . day of . . ., A.D. 18 . . ., did make, constitute and appoint, . . . . ., of the same place, my true and lawful attorney for the purposes and with the powers therein set forth, as will more fully and at large appear by reference thereto, or to the record thereof, made on the . . . day of . . ., A.D. 18 . . ., in liber . . . of powers of attorney, page . . . in the county recorder's office of . . . county.

Now know ye, that I, the said . . . . ., for divers good causes and considerations me hereunto moving, have revoked, countermanded, annulled and made void, and by these presents do revoke, countermand, annul and make void, the said letter, warrant or power of attorney, and all power and authority thereby given or intended to be given to the said . . . . .

In witness whereof, I have hereto set my hand and seal, at the . . . of . . . . this . . . day of . . ., A.D., the year of our Lord one thousand eight hundred and . . . .

. . . . . [L.S.]

#### *Substitution of Attorney.*

Know all men by these presents, that I, . . . . ., of the county of . . . in the state of . . . . ., by virtue of the authority to me given by the power of attorney [here describe the power of attorney fully, and, if recorded, state when and where], do substitute . . . . ., of the county of . . . . . and state of . . . . . attorney in my stead, to do, perform and execute, every act or thing which I might or could do by virtue of the within power of attorney, hereby ratifying and confirming all that the said substitute may do in the premises by virtue hereof and of the within power of attorney.

In witness whereof, etc.

#### *General Custom House Power.*

Know all men by these presents, that I, . . . . ., of the . . . of . . . . in the . . . of . . . . and state of . . . . have made, constituted and appointed, and by these presents do make, constitute and appoint, . . . . ., of the same place, my true and lawful attorney, for me in my name to receive and enter at the custom house of the district of . . . . any goods,

wares or merchandise, imported by me or which may hereafter arrive consigned to me, to sign my name to, seal and deliver for me and as my act and deed, any bond or bonds which may be required by the collector of the said district for securing the duties on any such goods, wares or merchandise; also, to sign my name to, seal and deliver for me and as my act and deed, any bond or bonds requisite for obtaining the debenture on any goods, wares or merchandise, when exported, and generally to transact all business at the said custom house in which I am or may hereafter be interested or concerned as fully as I could if personally present. And I hereby declare that all bonds signed and executed by my said attorney shall be as obligatory on me as those signed by myself, and this power shall remain in full force until revoked by written notice given to said collector.

In witness whereof, etc.

*Proxy or Power to Vote at Election of Directors.*

Know all men by these presents, that I, . . . . ., of the county of . . . . and state of . . . . ., do hereby constitute and appoint . . . . ., of the same place, my true and lawful attorney and agent for me and in my name, place and stead, to vote as my proxy at any election of directors of the . . . . ., according to the number of votes I should be entitled to vote if then personally present.

In witness whereof, etc.

## PRE-EMPTION RIGHT.

**Pre-emption Right.**—The right given to settlers upon the public lands of the United States to purchase them at a limited price in preference to others.

**Declaration to be Filed.**—Settlers upon surveyed lands must file their declaratory statements in the office of the district where the land is situated, within three months after said lands have been surveyed and the plats returned to the district land office; and those who have settled upon offered lands within thirty days after they have settled.

**Proof and Payment.**—In the first two cases proof and payment must be made at any time before said lands shall be sold, pursuant to the proclamation of the president of the United States. In the last case, within one year after such settlement.

**Description of Land.**—The declaratory statements must correctly describe by legal subdivisions, the tracts claim-



ed, which must not exceed [except where there are fractions included in the claim] one hundred and sixty acres of land. If mistakes shall have been made in the original filing they may be corrected at any time before the cause shall have been submitted. This is done by filing an amended statement.

**What must be Proved.**—It must appear from the proofs that the claimants settled with an honest intention to pre-empt, and as evidence of that fact they must prove that they have resided upon the land claimed at least six months.

**Contested Cases.**—In contested cases, the first settler [all other things being equal] is entitled to the land. It is of the greatest importance to success that the subdivisions claimed should be cultivated or occupied.

**Granted Land.**—The pre-emption laws do not apply to land claimed by grant. But if locations are made on such land and the grants afterwards held to be void, the same may be claimed by pre-emption as other lands.

**Railroad Reservations.**—No pre-emption rights can be acquired upon the odd sections within a railroad reservation. This does not apply to entries made before the railroad grant was made.

**Entry upon occupied Land.**—A pre-emptor may enter upon any public land open to such settlement, whether the same shall at the time be occupied and improved by others or not. Until a final adjudication by the proper department, the land is open for settlement by as many persons as may please to occupy it. If any of those who may have thus entered upon and occupied said land shall be *forcibly* ejected from the same and prevented from re-entering upon and occupying and improving the same, by *threats* or *force* or *both*, they shall not thereby forfeit their right to pre-empt the same at any future time; *provided*, that as soon thereafter as they can re-enter upon said land, without serious danger of personal peril, they shall proceed to cultivate and improve the same.

**State Title.**—The state acquires the right to the sixteenth and thirty-sixth sections of all the public lands immediately after survey has been made. Title to these lands comes through the state, and locations must be made under state laws.

#### UNITED STATES.

**Instructions.**—The following instructions are taken from "Instructions issued from the general land office of the United States." See "Zabriskie's Land Laws of the United States," page 49.

**Who may Claim.**—The individual claiming the benefits of the United States pre-emption laws, must be :

1st. A citizen of the United States or have filed his declaration of intention to become a citizen.

2d. Either the head of the family or a widow, or a single man over the age of twenty-one years.

3d. An inhabitant of the tract sought to be entered, upon which, in person, he has made a settlement and erected a dwelling-house since the first of June, 1840, and prior to the time when the land is applied for ; which land must, at the date of the settlement, have had the Indian title extinguished and been surveyed by the United States.

**A Person Bringing Himself** within each of the above requirements, by proof satisfactory to the register and receiver of the land district in which the lands may lie, taken pursuant to the rules hereinafter prescribed, will, after having taken the affidavit required by the act, be entitled to enter, by legal subdivisions, any number of acres not exceeding one hundred and sixty or a quarter section, to include his residence, and he may avail himself of the same at any time prior to the day of the commencement of the public sale, including said tract, where the land has not yet been proclaimed.

**Where the Land was Subject to Private Entry.**—Where the land was subject to private entry at the date of the law, and a settlement shall thereafter be made upon such land, or where the land shall hereafter become subject to private

entry, and after that period a settlement shall be made, which the settler is desirous of securing under this act, such notice of intentions must be given within thirty days after the date of such settlement. Such notice in all cases must be a written one, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act.

**When Proof, etc., to be Made.**—In all such cases the proof, affidavit and payment, must be made within twelve months after the date of such settlement.

**The Tracts Liable to entry under this act are some one of the following designations :**

1st. A regular quarter section, notwithstanding its quantity, may be a few acres more or less than one hundred and sixty, or a quarter section, which, though fractional in quantity by the passage of a navigable stream through the same, is still bounded by regular sectional and quarter-sectional lines.

2d. A fractional section, containing not over one hundred and sixty acres, or any tract being a detached or anomalous survey made pursuant to law, and not exceeding said quantity.

3d. Two adjoining half-quarter sections [in all cases to be separated by a north and south line, except on the north side of townships, where the surveys are so made as to throw the excess or deficiency on the north and west side of the township] of the regular quarters mentioned in the first designation; or, two adjoining eighty-acre subdivisions of the irregular quarters found on the north and west side of townships, where more than two such subdivisions exist or the excess may render them necessary, provided in the latter case the aggregate quantity does not exceed one hundred and sixty acres.

4th. Two half-quarter or eighty-acre subdivisions of a fractional or broken section, adjoining each other, the aggregate quantity not exceeding one hundred and sixty acres.

5th. A regular half-quarter and an adjoining fractional section, or an adjoining half-quarter subdivision of a frac-

tional section, the aggregate quantity not exceeding one hundred and sixty acres.

6th. If the pre-emptor should not wish to enter the quantity of one hundred and sixty acres, he may enter a single half-quarter section [made by a north and south line] or an eighty-acre subdivision of a fractional section.

7th. One or more adjoining forty-acre lots may be entered, the aggregate not exceeding one hundred and sixty acres.

8th. A regular half-quarter, a half-quarter subdivision or a fractional section may each be taken, with one or more forty-acre subdivisions lying adjoining, the aggregate not exceeding one hundred and sixty acres.

**First Settler only Protected.**—Only one person on a quarter section is protected by this law and that is the one who made the *first settlement*, provided he shall have conformed to the other provisions of the law.

**Only one Claim allowed.**—A person who has once availed himself of the provisions of this act cannot, at any future period or at any other land office, acquire another right under it.

**Who not Entitled.**—No person who is the proprietor of three hundred and twenty acres of land in any state or territory of the United States, is entitled to the benefits of this act.

**Same.**—No person who shall quit or abandon his residence on his own land to reside on the public land in the same state or territory, is entitled to the benefits of this act.

**Indian Title must be Extinguished.**—No pre-emption right exists by reason of a settlement on and inhabitancy of a tract, unless at the date of such settlement the Indian title thereto had been extinguished and the land surveyed by the United States.

**Evidence of Legality of Survey.**—The approval of the plat is the evidence of the legality of the survey; but in accordance with the spirit and intent of the law and for the purpose of bringing the settler within its provisions, the

land is to be construed as surveyed when the requisite lines are run on the field and the corners established by the deputy surveyor.

**Assignments not Allowed.**—No assignments or transfers of pre-emption rights can be recognized. The patents must issue to the claimants, in whose names alone all entries must be made.

SUNDRY DESCRIPTIONS OF LANDS WHICH ARE EXEMPTED FROM THE  
OPERATIONS OF THIS ACT.

1st. Lands included in any reservation by any treaty, law or proclamation, of the president of the United States, and lands reserved for salines and for other purposes.

2d. Lands reserved for the support of schools.

3d. Lands acquired by either of the two last treaties with the Miami tribe of Indians in the state of Indiana or which may be acquired of the Wyandot tribe of Indians in the state of Ohio or other Indian reservation, to which the title has been or may be extinguished by the United States at any time during the operation of this act.

4th. Sections of land reserved to the United States, alternate to other sections granted to any of the states for the construction of any canal, railroad or other public improvement.

5th. Sections or fractions of sections included within the limits of any incorporated town.

6th. Every portion of the public lands which has been selected as a site for a city or town.

7th. Every parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture.

8th. All lands on which are situated any known salines or mines.

**Duplicate Affidavits to be Filed.**—Persons claiming the benefit of this act are required to file duplicate affidavits, such as the law requires, and to furnish proof by one or more disinterested witnesses, of the facts necessary to establish the three requisites pointed out in the commencement of these instructions.

**Witness to be Sworn.**—The witnesses are to be first duly sworn or affirmed to speak the truth and the whole truth, touching the subject of inquiry, by some officer competent to administer oaths and affirmations.

**Adverse Claims.**—In case adverse claims shall be made to the same tract, each claimant must be notified of the time and place of taking testimony and allowed the privilege of cross-examining the opposite witnesses and of producing counter proof, which should also be subject to cross-examination.

**Depositions Received, When.**—When, by reason of distance, sickness or infirmity, the witnesses cannot come before the register of the land office, the latter is authorized to receive their depositions, which must be, in all other respects, conformable to the within regulations.

**Notice of Adverse Claim.**—The notice to adverse claimants should be in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking evidence. The proof, in all cases, should consist of a simple detail of facts merely and not of statements, in broad or general terms.

**"Head of Family," Proof of.**—The witnesses must state if the pre-emptor be the "head of a family," the facts which constitute him such, whether a husband having a wife and children or a widower or an unmarried person under twenty-one years of age, having a family, either of relatives or others, depending upon him or hired persons or slaves.

**Residence, Inhabitaney and other Facts.**—All the facts respecting the settlement in person, inhabitaney or personal residence, *the time of commencement*, the manner and extent of continuance, as well as those showing the apparent objects, should be stated.

**Statement and Appeal.**—It must be stated that the claimant made the settlement on the land in person; that he has erected a dwelling on the land; that the claimant lived in it and made it his home, etc. Should the land offi-

cer decide against a claimant, he may appeal to the commissioner of the land office at Washington.

**Fact of Settlement, Affidavit of, not Necessary.**—The affidavit of the claimant in reference to the *fact of settlement*, etc., is not required. The *only* affidavit required of the claimant is that prescribed by the thirteenth section of the act.

**Duplicates of Affidavit, etc.**—No entry must be permitted until this affidavit is taken. Duplicates thereof must be signed by the claimant and the fact of the oath being taken, must be certified by the register or receiver administering it; one copy to be filed in the register's office and the other to be transmitted to the land office at Washington.

#### FORMS.

*Statements of a Settler on Land Subject to Private Entry at the Date of Settlement, required by the Fifteenth Section of the Act of Sept. 4th, 1841.*

[For cases where, at the date of the law, the land claimed was subject to private entry.]

I, ...., of ....., being ["the head of a family," or, "widow," or "single man over the age of twenty-one years," as the case may be], and a citizen of the United States [or, "having filed my declaration to become a citizen, as required by the naturalization laws" as the case may be], have, since the .... day of ....., 18.., to wit, on the .... day of ....., A.D. 18.., settled and improved the .... quarter of section number .... in township number .... of range number .... in the district of lands subject to sale at the land office at ....., and containing .... acres, which land was subject to private entry at the passage of the act of September 4th, 1841; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of said act of September 4th, 1841.

Given under my hand, this .... day of ....., A.D. 18..

[Signed]

..... [L.S.]

In presence of

.....

[For cases where the land claimed shall have been rendered subject to private entry since the passage of the law.]

I, ...., of ....., being ["the head of a family," or, "widow," or "single man over the age of twenty-one years," as the case may be], a citizen of the United States [or, having filed my declaration to become a citizen as required by the naturalization laws," as the case may be], did, on the .... day of ....., A.D. 18, settle and improve the .... quarter of section number .... in township number .... of range number .... in the district of lands subject to sale at the land office at ....., and containing .....

acres, which land has been rendered subject to private entry since the passage of the act of September 4th, 1841, but prior to my settlement thereon; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of said act of September 4th, 1841.

Given under my hand this .... day of ...., A.D. 18...

[Signed]

..... [L.S.]

In presence of

.....

[Affidavit required of pre-emption claimant.]

I ...., claiming the right of pre-emption under the provisions of an act of congress entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September 4th, 1841 to the .... quarter of section number .... of township number .... of range number ...., subject to sale at ...., do solemnly swear [or, "affirm," as the case may be], that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any state or territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which I may acquire from the government of the United States should inure in whole or in part to the benefit of any person except myself.

[Signed]

.....

I ...., register [or, "...., receiver"] of the land office at ....., do hereby certify that the above affidavit was taken and subscribed before me this .... day of ...., A.D. 18...

[Signed]

.....

Register.

[or, "....., receiver"].

*Affidavit to be Filed in cases where the Settler shall have Died before Proving up and Entering his Claim.*

I, .... executor of the estate of ...., [or, "administrator of the estate of ....," or, "one of the heirs of ...., aged .... years," as the case may be], do solemnly swear [or, "affirm," as the case may be], that the said ...., to the best of my knowledge and belief, entered upon the .... quarter of section number ...., of township number ...., of range number ...., subject to sale at ...., in his own right and exclusively for his own use and benefit; and that he has not, directly or indirectly, made any contract or agreement, in any way or manner, with any person or persons whatever, by which the title to the land which he might have acquired from the government of the United States, by virtue of said settlement, under the law of June 22d, 1838, or, "June 1st, 1840," as the case may be], should inure to the use or benefit of any one except himself, or to convey or to transfer the said land or the title which he might have



acquired to the same, to any other person or persons whatever, at any subsequent time.

.....

Executor of the estate of .....

[or, "administrator of the estate of .....", or, "one of the heirs of .....", as the case may be].

Sworn and subscribed before me, this .... day of .... A.D. 18..

.....

Register,

[or, "receiver," or, "justice of the peace"].

*Affidavit to be Filed in cases where the Settler shall have Died before Proving up and Entering his Claim.*

I, ....., executor of the estate of ....., [or, "administrator of the estate of .....", or, "one of the heirs of ....., aged .... years," as the case may be], do solemnly swear [or, "affirm," as the case may be], that, to the best of my knowledge and belief, the said ....., who was a settler on the .... quarter of section number ....., of township number .... of range number ....., subject to the sale at ....., has never had the benefit of any right of pre-emption under the act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4th, 1844; that he was not, at the time of his death, the owner of three hundred and twenty acres of land in any state or territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the government of the United States should inure in whole or in part, to the benefit of any person except himself.

[Signed]

.....

Executor,

[or, "administrator," or, "one of the heirs of .....", as the case may be].

I, ...., register [or, "....., receiver] of the land office at ....., do hereby certify that the above affidavit was taken and subscribed before me, this .... day of ....., A.D. 18..

[Signed]

.....

Register,

[or, "receiver"].

*Declaratory Statement in Cases where the Land is not Subject to Private Entry*

I, ... .., of ... .., being the head of a family" [or, "widow," or, "single man over the age of twenty-one years," as the case may be, a citizen of the United States, or, "having filed my declaration to become a citizen, as required by the naturalization laws," as the case may be], did, on the ... day of ... A.D. 18.., settle and improve the ... quarter of section number ... .., in township number ...., of range number ...., in the district of lands sub-

ject to sale at the land office at . . . , and containing . . . acres, which land has not yet been offered at public sale, and thus rendered subject to private entry ; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of September 4th, 1841.

Given under my hand, this . . . day of . . . , A.D. 18..

[Signed]

.....

In presence of

.....

## PRESUMPTION.

**Presumption.**—An inference of the existence of a disputed fact, drawn by a judicial tribunal, by a process of probable reasoning, from one or more matters of fact, either admitted in the cause or otherwise satisfactorily established.

**Conclusive Presumptions**, are inferences which the law makes so peremptorily that it will not allow them to be overturned by any contrary proof, however strong. Among conclusive presumptions may be reckoned, that an infant under the age of seven years is incapable of committing a felony ; that a boy under fourteen is incapable of committing a rape ; that the issue of a wife with whom her husband cohabits is legitimate, though her infidelity be proved ; that all persons subject to a law are acquainted with its provisions, and the like.

**Disputable Presumptions** are inferences of law, which hold good until they are invalidated by proof of a stronger presumption. Among disputable presumptions may be reckoned, the presumption that a man is innocent of the commission of a crime until proven guilty ; that the possessor of property is the owner ; that possession of fruits of a crime is guilty possession ; that things usually done in the course of trade have been done, and the like.

## PRIMA FACIE.

**Prima Facie.**—At first view or appearance ; as, the holder of a bill or note indorsed in blank, is, *prima facie*, the owner. *Prima facie* evidence of fact is sufficient to establish the fact, unless rebutted. For example : When build-

ings are fired by sparks emitted from a locomotive engine passing along the road, it is *prima facie* evidence of negligence on the part of those who have the charge of it.

## PROTEST.

**Protest.**—A notarial act, made for want of payment of a promissory note or for want of acceptance or payment of a bill of exchange by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, etc.

**Demand and Presentment of Commercial Paper.**—The presentment and demand of commercial paper having days of grace, must be made within reasonable hours on the last day of grace. For the purpose of fixing the liability of indorsers, the note or bill is payable on demand at any time within those hours.

**What are Reasonable Hours,** will depend upon the question whether or not the bill or note is payable at a bank or place where, by the established usages of trade, business transactions are limited to certain stated hours.

**If there are such stated Hours** where the note or bill is payable, the presentment and demand must be made within those hours. But if there are no stated hours and no place of payment is designated in the note or bill, the presentment and demand may be made either at the place of business or residence of the maker or acceptor.

**If at his Place of Business,** it must be within the usual business hours of the city or town; if at his residence, then within those hours when the maker or acceptor may be presumed to be in a condition to attend to business.

**Notice of Non-payment.**—Notice may be given to the indorser or other parties entitled to notice, immediately after presentment to the maker or acceptor and refusal by him to pay, although it is not necessary that notice should be given until the following day.

**After due Presentment and demand,** the liability of the

parties becomes fixed. If, however the maker of the note chooses after this to seek out the holder and pay his note, he can do so and thus save himself from the liability to suit on the following day.

**For the purpose of Fixing** the liability of an indorser, the note is payable on demand at any time during reasonable hours on the last day of grace; but for the purpose of sustaining an action, the holder must wait until the following day, as the maker has the whole day to make payment.

**Effect of Notarial Certificate.**—A notarial certificate of presentment and demand and of protest for non-payment of a promissory note, taken from the record of the notary, is admissible, and is *prima facie* evidence of the facts contained therein in like manner as the original protest.

**Form of Certificate.**—It is not necessary that the certificate should state the form of notice given; any notice is sufficient if it inform the party to whom it was given, either in express terms or by necessary implication, that the note has been duly presented at its maturity and dishonored.

**Notice by Mail.**—In all cases where notice of non-acceptance or non-payment of a bill or note or other negotiable instrument, may be given by mail, it will be sufficient if such notice be directed to the city or town where the person sought to be charged resided at the time of making, drawing or indorsing, the same, unless at the time of such making, drawing or indorsing, he shall specify thereon the post-office to which he may require the notice to be addressed.

**A Notice of Protest** should be sent to the post-office at which the person to whom it is directed is accustomed to get his letters, where his address is not indorsed on the bill or note.

**Form of Protest.**—No precise form of words is necessary to constitute a sufficient notice of protest. The identity of the note and the fact of the demand and non-payment, must be brought home to the party sought to be charged, and the notice may be either oral or written.

**The Certificate of the Notary** need not state by whom the service of notice and deposit in the post-office was made.

**When Demand must be Made.**—In order to hold an indorser liable, a demand of payment on bills or notes must be made on the third day of grace. If the third day falls on Sunday or on any great holiday, demand must be made on Saturday or the day preceding the holiday. The demand must be made at the place of business of the maker or acceptor within business hours or at the place of payment, where it is specified. If the party has absconded, no demand is necessary; and where he has no place of business, it may be made at his dwelling-house. It is competent for any person who has arrived at years of discretion, though not a notary, to make the demand, if authorized by the holder. An indorsed note, payable on demand, must be presented within a reasonable time.

**Where to Present Note and make Demand in Case of Non-residents of the State.**—Where a note, not payable at any particular place, is made and indorsed, and both the maker and indorser reside in a foreign country, it must be duly presented to the maker, if the place of his residence be known, and notice given to the indorser in order to charge the latter.

**Waiver of Protest.**—Notice may be dispensed with by express waiver or by any act which will amount to a waiver.

**Notice to Indorsers.**—The protest of a promissory note must be attended with all the incidents of a foreign bill of exchange. It is the duty of the notary to give notice of protest to the indorsers.

**If a Note be Indorsed after it is due,** the indorser is entitled to demand and notice before he is liable to his indorser. No time is expressly limited, as in case of notes or bills not due, for demand and notice to the indorser, but the law requires a demand to be made in a reasonable time and notice of default seasonably given.

**Limitation of Notary's Authority, etc.**—A notary or

other officer authorized to take and certify acknowledgments, and the proof of the execution of deeds and other instruments, cannot alter or correct his certificate, even to insert the statement of a fact inadvertently admitted, after some decisive act is done showing that he has exercised his authority over the subject. After taking the acknowledgment and making and delivering the return, his functions cease, and he is discharged from all further authority. See **BILLS AND NOTES—NOTARY PUBLIC.**

## PUBLICATION.

**Publication.**—The act by which a thing is made public.

A **Libel** may be published either by speaking or singing, as when it is maliciously repeated or sung in the presence of others; or by delivery, as when a libel or a copy of it is delivered to another. A libel may also be published by pictures or signs, as by painting another in an ignominious manner. See **LIBEL.**

## PUBLIC OFFICERS.

**Public Officers.**—All state and county officers, except notaries public and a few officers of special creation by the legislature, are chosen by a popular election.

The **Statutes** of California, Nevada and Idaho, contain the following provisions :

**Oath of Office.**—Every officer chosen or appointed to any office of trust or profit under the authority of this state, before entering upon his office must take and subscribe the oath [or, "affirmation"] of office, which may be taken and subscribed before any judge of the supreme, district court or clerk thereof, county judge or clerk, notary public or justice of the peace; and, except in cases of members of the legislature, the governor or lieutenant-governor must be indorsed upon the commission or certificate, within ten days after the reception of his commission or certificate, or within ten days after the commencement of his term

of office, if he has received his commission or certificate. Deputies must take the same oath as the principal.

**State Library.**—Every officer of this state, civil and military, commissioned by the governor, is required, on receipt of his commission, to pay the sum of five dollars to the secretary of state, for the benefit of the library fund.

**Number of Sureties.**—Unless otherwise provided, there shall be at least two sureties upon the official bond of every officer.

**Approval of Bond.**—The approval of every official bond shall be indorsed thereon and signed by the court or officer approving the same.

**No Officer,** with whom any official bond is required to be filed, shall file and take charge of such bond until approved as prescribed by law.

**Penalty for Performing Duties without Bond.**—If any person, elected or appointed to any office, shall perform any of the duties thereof without having executed and filed in the proper office any bond required of him by law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding one thousand dollars and his office be declared vacant.

**Construction of Bond, etc.**—Every official bond, executed by any officer pursuant to law, shall be deemed and taken to be in force and obligatory upon the principal and sureties therein, for any and all breaches of the condition or conditions thereof committed during the time such officer shall continue to discharge any of the duties of or hold such office, and for the faithful discharge of all the duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition shall be expressed therein, to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his own name without assignment thereof.

**Bond may be Sued on, notwithstanding Defects.**—Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defects in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be equitably bound to the state or party interested, and suit may be brought, the defect being suggested and the parties held responsible.

**Discharge of Sureties.**—New or additional bonds may be required whenever sureties may become insolvent or remove from the state, or from other cause such further bond becomes necessary, also when the sureties wish to be discharged, and a failure to file such new or additional bond when legally required, vacates the office.

**The Discharge of any Surety releases him only as to Liability to be incurred after the discharge.**

**Officers not to Deal in certain Securities.**—All public officers are prohibited for dealing directly or indirectly in scrip, warrants and all other evidences of indebtedness (except the same be funded against the state or any county, city or town, unless it be such warrants, scrip, etc., as they may have received for their services. This prohibition, however, applies to state officers only as to state indebtedness, and to county and city officers only as to the indebtedness of the counties or cities they represent. The offense is made a misdemeanor, punishable by fine and imprisonment, forfeiture of office and disqualification for any other office. Provision is also made for the punishment of officers for extortion or for refusing or neglecting to perform any lawful official act. The statute also forbids officers from being directly or indirectly interested in any public purchase or any public contracts made by the corporation or body of which he is a member or in any purchase made in the department under which he is appointed to serve.

#### P. E. S.

(Signed) \_\_\_\_\_

I do solemnly swear that I will support the constitution of



the United States and the constitution of the state of ....., and that I will faithfully discharge the duties of [give the title of the office] according to the best of my ability.

[Signed] .....

Sworn and subscribed before me, this .... day of ....., A.D. 18..

.....

County judge of the county of .....

*General Form of an Official Bond.*

Know all men by these presents, that we, ...., as principal, and ..... and ....., of, etc., as sureties, are held and firmly bound unto the state of ..... [or, the officer or officers to whom the bond is to be given] in the penal sum of .... dollars, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the .... day of ....., A.D. 18..

Whereas, the above-bounden .... has been appointed [or, "elected"] to the office of [give the title of the office], now, therefore, the condition of the above obligation is such that if the said .... shall well and truly and faithfully perform and execute the duties of [title of the office, or, "his trust"] according to law and according to the requirements of any law to be hereafter enacted, then the above obligation to be void; else to remain in full force.

[Signed]

..... [L.S.]

..... [L.S.]

..... [L.S.]

Signed and sealed in presence of

.....

*Commission.*

The people of the state of ..... to all to whom these presents shall come, greeting :

Know ye, that, whereas, ...., on the .... day of ....., in the year of our Lord eighteen hundred and ....., was duly elected ..... of the county of ..... for the full term, as appears from the returns of the election on file in the office of the secretary of state :

Now, therefore, I ...., governor of the state of ....., do by these presents commission the said .... as ..... of said county aforesaid, to enter upon the duties of the office on the .... of ....., A.D. 18.., to have and to hold said office with all the powers, privileges and emoluments to the same of right appertaining, unto him, the said ....., for the term prescribed by law.

In testimony whereof, I have caused the great seal of the state of ..... to be hereunto affixed.

Given under my hand at ..... the .... day of ....., in the year of our Lord eighteen hundred and ....

[L.S.]

Attest : .....

Secretary of state.

**Bond may be Sued on, notwithstanding Defects.**—Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defects in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be equitably bound to the state or party interested, and suit may be brought, the defect being suggested and the parties held responsible.

**Discharge of Sureties.**—New or additional bonds may be required whenever sureties may become insolvent or remove from the state, or from other cause such further bond becomes necessary, also when the sureties wish to be discharged, and a failure to file such new or additional bond when legally required, vacates the office.

**The Discharge of any Surety releases him only as to liability to be incurred after the discharge.**

**Officers not to Deal in certain Securities.**—All public officers are prohibited for dealing directly or indirectly in scrip, warrants and all other evidences of indebtedness (except the same be funded) against the state or any county, city or town, unless it be such warrants, scrip, etc., as they may have received for their services. This prohibition, however, applies to state officers only as to state indebtedness, and to county and city officers only as to the indebtedness of the counties or cities they represent. The offense is made a misdemeanor, punishable by fine and imprisonment, forfeiture of office and disqualification for any other office. Provision is also made for the punishment of officers for extortion or for refusing or neglecting to perform any lawful official act. The statute also forbids officers from being directly or indirectly interested in any public purchase or any public contracts made by the corporation or body of which he is a member or in any purchase made in the department under which he is appointed to serve.

#### FORMS.

##### *Official Oath.*

I do solemnly swear [or, "affirm"] that I will support the constitution of

the United States and the constitution of the state of . . . . ., and that I will faithfully discharge the duties of [give the title of the office] according to the best of my ability.

[Signed] . . . . .

Sworn and subscribed before me, this . . . . day of . . . ., A.D. 18..

..... County judge of the county of .....

*General Form of an Official Bond.*

Know all men by these presents, that we, . . . . ., as principal, and . . . . . and . . . . ., of, etc., as sureties, are held and firmly bound unto the state of . . . . . [or, the officer or officers to whom the bond is to be given] in the penal sum of . . . . dollars, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the . . . . day of . . . ., A.D. 18..

Whereas, the above-bounden . . . . . has been appointed [or, "elected"] to the office of [give the title of the office], now, therefore, the condition of the above obligation is such that if the said . . . . . shall well and truly and faithfully perform and execute the duties of [title of the office, or, "his trust"] according to law and according to the requirements of any law to be hereafter enacted, then the above obligation to be void; else to remain in full force.

[Signed] . . . . .

[L.S.]

[L.S.]

[L.S.]

Signed and sealed in presence of

*Commission.*

The people of the state of . . . . . to all to whom these presents shall come, greeting :

Know ye, that, whereas, . . . . ., on the . . . . day of . . . ., in the year of our Lord eighteen hundred and . . . ., was duly elected . . . . . of the county of . . . . . for the full term, as appears from the returns of the election on file in the office of the secretary of state :

Now, therefore, I . . . . ., governor of the state of . . . . ., do by these presents commission the said . . . . . as . . . . . of said county aforesaid, to enter upon the duties of the office on the . . . . . of . . . ., A.D. 18.., to have and to hold said office with all the powers, privileges and emoluments to the same of right appertaining, unto him, the said . . . . ., for the term prescribed by law.

In testimony whereof, I have caused the great seal of the state of . . . . . to be hereunto affixed.

Given under my hand at . . . . . the . . . . day of . . . ., in the year of our Lord eighteen hundred and . . . .

[L.S.]

Attest : . . . . .

Secretary of state.

*Certificate of Election.*

United States of America,  
State of ....., county of .....

Office of the county clerk of the county of .....

I ...., county clerk of the said county, do hereby certify that, at an election held in said county of ..... on ....., the .... day of ....., *Anno Domini* one thousand eight hundred and ....., .... was elected [here state what office].

Witness my hand and the seal of the county court of the county of ..... this .... day of ....., A. D. 18..

.....

County clerk.

State of .....,  
county of ..... } ss.

I ...., do solemnly swear that I will support the constitution of the United States of America and the constitution of the state of ....., and that I will faithfully discharge the duties of .. to the best of my ability. So help me God.

Subscribed and sworn to before me, this .... day of ....., 18..

.....

*Affidavit of Justification upon the foregoing Bonds.*

State of .....,  
county of ..... }

..... and ....., being duly sworn, each for himself, doth depose and say, that he is a resident and freeholder or householder in the said county of ....., and that he is worth the amount for which he becomes liable as surety on the foregoing bond, over and above his debts and liabilities, in unincumbered property situated within this state, which may be levied upon, and is not exempt from execution and forced sale.

[Signed]

.....

.....

.....

Subscribed and sworn to before me, this .... day of ....., 18..

[Signed]

.....

County clerk.

*Petition for Release from Official Bond.*

State of .....,  
county of ..... }

To the [address the petition to the officer or board who approved the bond] : The undersigned respectfully represents that he is one of the sureties on the official bond of ...., filed ....., 18.., in the .... office of said county; which bond was duly approved by you before filing. The undersigned further represents that he is informed and he believes that the said .... is incompetent by reason of intemperance [or, "he is a defaulter," or, "he is about to decamp," or, "he is using the public money

in his private business," or, "he is insane," or, "gambles," etc.] to perform the duties of said office. Wherefore petitioner prays that the said ..... may be ordered to show cause in a proper manner why this petitioner should not be released and discharged from the official bond of the said ..... Dated ....., 18..

[Signed] .....

Subscribed and sworn to before me, this .... day of ....., 18..

.....  
County clerk,  
[or, "notary public"].

*Affidavit of Service of the Same.*

State of .....,  
county of ..... }

...., being duly sworn, says, that he is a white, male citizen of the United States; and that he served a copy of the within statement or affidavit of ...., on the said ....., [here state the office he holds] at the city of ....., county of ....., on the .... day of ....., 18....

[Signed] .....

Subscribed and sworn to [as above].

## QUASH.

**Quash.**—When proceedings are clearly irregular and void, the courts will quash them; that is, set them aside.

**In Criminal Cases**, where an indictment is so defective that no judgment can be given upon it, should the defendant be convicted the court will quash it.

## QUITCLAIM.

**Quitclaim.**—A deed of release by which the grantor conveys to the grantee all his right, title and interest, in and to real property described in the deed. See DEED—CONVEYANCING.

## RATIFICATION.

**Ratification.**—An agreement to adopt an act performed by another for the person ratifying.

**Express Ratifications** are those made in express and direct terms of assent.

**Implied Ratifications** are such as the law presumes from the acts of the principal, as if ... pay for goods for .....

and the latter, knowing the fact, receives them and apply them to his own use.

**By Ratifying a Contract,** a man adopts the agency altogether, as well what is detrimental as that which is for his benefit. The principal [which is . . . . . in the foregoing example] has the right to elect whether he will adopt the unauthorized act of . . . . . [the agent] or not. But having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and . . . . . becomes bound, as if he had originally authorized the act of . . . . .

## RECEIPT.

**Receipt.**—A receipt in full of all demands, is generally considered, by unprofessional men, as conclusive evidence that the debt is fully paid and discharged. This is untrue. Such a receipt is simply evidence of the fact of payment, and it may be proved to be a mistake or shown to be false.

**Effect of part Payment.**—The following act of the legislature of California, makes payments of *less* sums of money in satisfaction of *greater* sums, legal and binding. Before this law was passed such payments were not binding: "By agreement between creditor and debtor, a less sum than the whole amount may be paid and received, in full payment and discharge of any indebtedness, if such agreement be clearly manifested by a receipt of instrument in writing, signed by such creditor. See **RELEASE**."

## FORMS.

\$....., ..... 18..  
Received of ...., of the .... and county of ....., the sum of .... dollars, in full and complete satisfaction of a debt due me from ...., of the same place. Said sum of money now paid me by the said ....., being less than the true sum due me from him, as aforesaid. This instrument is intended as a receipt of a less sum than the whole amount due, and in full discharge of the whole amount, under and by virtue of an act of the legislature of the state of ....., entitled "An act for the relief of debtors," approved ...., 18..

[Signed]

.....

*Receipt in full of all Demands.*

\$....., ..... 18..  
Received of ..... dollars, in full of all demands against him.  
.....

*Receipt on Account.*

\$....., ..... 18..  
Received of ..... dollars, to apply on account.  
.....

*Receipt for Money paid for Another.*

\$....., ..... 18..  
Received of ..... dollars, in full of all demands against .....  
.....

*Receipt for a Special Purpose.*

Received, ..... 18., from ..... dollars, to pay the  
account of ..... against him.  
.....

*Receipt when Money is Paid by a Third Person.*

....., ..... 18..  
Received of ..... through ..... dollars, in full of all de-  
mands against ..... up to this date.  
.....

*Receipt of Interest to be Indorsed on a Bond.*

Received, ..... 18., of ..... dollars, being the semi-annual  
interest this day due on the within bond.  
.....

*Receipt in full for a Special Account.*

....., ..... 18..  
Received from ..... dollars, in full of all demands for ..... to  
....., 18..  
.....

RECORDING.

**Recording.**—In the states of the Pacific, every conveyance or other instrument in writing, conveying or affecting real estate or any instrument in writing, by which any real estate or interest in real estate is created, aliened, mortgaged or assigned, except wills, leases for a term not exceeding one year and executory contracts for the sale or purchase of lands, properly proved or acknowledged and certified, may be recorded in the county where the land affected by the instrument lies and [with the exception of

powers of attorney] may be used in evidence without further proof; or if recorded and lost, the record or a certified copy of the record may be used in evidence, subject to being rebutted by proof of incompetency of the witness by whom the execution of the instrument purports to have been proved.

**Conveyances or Deeds affecting Lands** are of force between the parties without recording; but in order to give notice to third parties, the deed should be recorded in the office of the recorder of the county in which the land lies; and except where there are special and important reasons for not placing the deed at once upon record, it is recommended that every deed should be recorded as soon as possible after it has been properly acknowledged or proved.

**As a prerequisite to such Recording**, the instrument must be acknowledged or proved before the proper officer, and such acknowledgment or proof must be certified by the officer in the proper form, or the purposes of such recording will not be effected.

**If such Deed or other Instrument** be not lawfully acknowledged and recorded, it will still be valid between the parties to the same and their representatives—but will not hold good as against the title of a subsequent purchaser in good faith and for a valuable consideration, whose deed shall have been duly acknowledged and recorded. See **ACKNOWLEDGMENT**.

## REDEMPTION.

**Redemption.**—In California, Nevada and Idaho, upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest and claim, of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term the sale shall be absolute. In all other cases the property shall be subject to redemption.

**Property Sold** subject to redemption or any part sold separately may be redeemed in the manner hereinafter pro-



vided, by the following persons or their successors in interest :

1st. The judgment debtor or his successor in interest in the whole or any part of the property.

2d. A creditor having a lien by judgment or mortgage on the property sold or on some share or part thereof subsequent to that on which the property was sold.

**When to be Redeemed.**—The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale on paying the purchaser the amount of his purchase with twelve per cent. thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase and interest on such amount; and if the purchaser be also a creditor, having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest. [In Nevada and Idaho, the redemptioner must pay eighteen per cent. thereon in addition.]

**If Property be so Redeemed** by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption with four per cent. thereon in addition, and the amount of any assessment or taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest: *provided*, that the judgment under which the property was sold need not be so paid as a lien. The property may be again and as often as the debtor or a redemptioner is so disposed redeemed from any previous redemptioner within sixty days after the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold held by the said

last redemptioner previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after the sale the purchaser or his assignee shall be entitled to a conveyance, or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made and notice thereof given, the time for redemption shall have expired and the last redemptioner or his assignee shall be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires the effect of the sale shall be terminated and he be restored to his estate.

**Proof to be Made.**—A redemptioner shall produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff:

1st. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed, or, if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder.

2d. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto.

3d. An affidavit by himself or his agent showing the amount then actually due on the lien.

**Rents and Profits.**—The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof: *provided*, that, in case the property shall be redeemed, the amount of such rents and profits which may have been received by such purchaser shall be applied towards the payment of the amount of purchase money, unless the redemptioner releases such application of rents and profits so received.

## REHEARING.

**Rehearing.**—A second consideration which a court gives to a cause on a second argument.

A Rehearing takes place when the court has doubts on the subject to be decided, but will not be granted by a court after a cause has been remitted to the court below to carry into effect the decree of the superior court.

## RELEASE.

**Release, how Executed.**—A release should always be executed under *seal*. When so executed a release from all demands extinguishes all possible causes of action and leaves the parties to it in the same position as though they never had business relations with each other.

**Effect of Release.**—A release of one of many equally wrong-doers generally releases all. This, of course, does not apply to such of the parties as covenant under seal to remain liable. A release of one of several joint obligors releases all.

**Agreement not to Sue.**—An agreement not to sue two joint debtors releases both, but an agreement not to sue one will not serve as a release to either.

## FORMS.

### *Release of all Demands.*

Know all men by these presents, that I, . . . . ., of . . . . ., for and in consideration of the sum of . . . . dollars, to me in hand paid by . . . . ., of said city, have remised, released and forever discharged, the said . . . . . from all claims of every kind, nature and character, soever against him from the beginning of the world to this day. As witness my hand and seal, this . . . . day of . . . ., one thousand eight hundred and . . . .

..... [L.S.]

### *Special Release.*

Know all men by these presents, that I, . . . . ., of . . . . ., for and in consideration of the sum of . . . ., to me in hand paid by . . . . ., of said city, have remised, released and forever discharged, and by these presents do, for myself, my heirs, executors, administrators and assigns, remise, release and forever discharge, the said . . . . ., his heirs, executors and administrators, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, claims and demands, whatsoever, in law or in equity, which I ever had or now have or which I or my heirs, executors, administrators or assigns, hereafter can, shall or may, have by reason of any matter, cause or thing, whatever, from the beginning

of the world to this day, arising out of any dealings or transactions between myself and the said . . . . . at my store in the city of . . . . .

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release made in Pursuance of an Award.*

Know all men by these presents, that I, . . . . ., of, etc., in the county of, etc., have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto . . . . ., of, etc., in the said county, his heirs, executors and administrators, from all actions, cause and causes of action, judgments, suits, controversies, trespasses, debts, duties, damages, accounts, reckonings and demands, whatsoever, for or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the . . . . day of . . . . last, save and except my right to redeem a certain farm now in mortgage to the said . . . . . at the time, under the terms and in the manner prescribed in and by a certain award made the . . . . day of . . . ., in the year 18.., by . . . . ., of, etc., on a reference to him of all disputes between me and the said . . . . .

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Mutual General Release by Indenture.*

This indenture, made this . . . . day of . . . ., between . . . . ., of, etc., of the one part, and . . . . ., of, etc., of the other, witnesseth, that on the day hereof the said . . . . . and . . . . . have each paid to the other the sum of . . . . dollars, and each of them has canceled and delivered up to the other certain covenants, bonds, notes of hand and written contracts, upon which each of the parties claimed and pretended to have divers claims and demands on the other; the said claims and contracts so canceled and delivered up being supposed and intended to be all the claims and evidence of claim by each of the parties hereto on the other. And, in consideration thereof, each of them, the said . . . . . and . . . . ., does hereby for himself and his legal representatives release and absolutely and forever discharge the other of and from all claims and demands, actions and causes of action of every name and nature, so that neither of them shall have any claim on the other directly or indirectly on any contract or supposed liability or thing undertaken, done or omitted to be done, from the beginning of the world to this day.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release to a Guardian.*

Know all men by these presents, etc., that . . . . ., etc., . . . . and heir of . . . . ., deceased, now over twenty-one years old, hath remised, released and forever quitclaimed, and by these presents doth remise, etc., unto . . . . ., of . . . . ., his guardian, all and all manner of action, actions, suits, reckonings, accounts, debts, dues and demands, whatsoever, which he, the said . . . . ., ever had, now hath or which he, his executors or administrators, at any time hereafter can or may have, claim or demand, against

the said . . . . ., his executors or administrators, tor, touching and concerning the management and disposition of any of the lands, tenements and hereditaments, of the said . . . . ., situate, etc., or any part thereof, or for or by reason of any moneys, rents or profits, by him received out of the same, or any payments made thereout, during the minority of the said . . . . ., or by reason of any matter, cause or thing, whatsoever, relating thereto, from the beginning of the world to the day of the date hereof.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release of a Proviso or Condition.*

Know all men by these presents, etc., that I, . . . . ., of . . . . ., for divers good considerations me hereunto moving, have remised, released and quitclaimed, and, by these presents, for me, my executors and administrators and assigns, do, etc., unto . . . . ., of . . . . ., his heirs, executors, administrators and assigns, as well one proviso or condition and all and every the sum and sums of money specified in the same proviso or condition, contained or comprised in one pair of indentures, of, etc., bearing date, etc., made between me, the said . . . . ., of the one part, and the said . . . . ., of the other part, and also all and all manner of actions and suits, cause and causes of action and suits, for or concerning the said proviso or condition.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release of a Legacy.*

Know all men by these presents, that, whereas, . . . . ., of . . . . ., in the county of . . . . . and state of . . . . ., by his last will and testament, in writing, bearing date the . . . . . day of . . . . ., A.D. 18.., did, among other legacies therein contained, give and bequeath unto me, . . . . ., of . . . . ., in the said county, the sum or legacy of . . . . . dollars, and of his said will and testament did make and constitute . . . . . the sole executor [or, ". . . . . and . . . . . joint executors"]; Now, therefore, I the said . . . . ., hereby acknowledge the receipt from the said . . . . ., executor [or, ". . . . . and . . . . ., joint executors"], as aforesaid, of the said sum or legacy of . . . . . dollars so given and bequeathed to me as aforesaid, and do acquit, release and discharge, the said . . . . . [or, ". . . . . and . . . . ."] of and from all legacies, dues and demands, whatsoever, under or by virtue of the said last will and testament or against or out of the estate of the said . . . . .

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release of a Trust.*

To all, etc., . . . . ., etc., sendeth greeting :

Whereas, by indenture bearing date . . . . ., made between, etc. [here recite the deed], in which said indenture the said . . . . ., doth hereby declare that his name was only used in trust, for the benefit and behoof of . . . . . : Now know ye, that I, the said . . . . ., in discharge of the trust

reposed in me, at the request of the said . . . . ., have remised, released and surrendered, assigned and set over, and by these presents, for me, my executors and administrators, do freely and absolutely remise, etc., unto the said . . . . ., his executors, etc., all the estate, right, title, interest, use, benefit, privilege and demand, whatsoever, which I, the said . . . . ., have or may have or claim of or to the said premises or of and in any sum of money or other matter or thing whatsoever, in the said indenture contained, mentioned and expressed; so that neither I, the said . . . . ., my executors or administrators or any of us, at any time hereafter, shall or will ask, claim, challenge or demand, any interest, etc. or other thing, in any manner whatsoever, by reason or means of the said indenture or any covenant therein contained, but thereof and therefrom, and from all actions, suits and demands, which I, my executors, administrators or assigns, may have concerning the same, shall be utterly excluded and forever debarred by these presents.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release from a Legatee upon his Coming of Age.*

Know all men by these presents, that whereas, . . . . ., of . . . . ., made his last will and testament in writing, bearing date . . . . ., and among other legacies therein contained, did give and bequeath unto me, . . . . ., of . . . . ., his son, the annual sum of . . . . ., to be paid to me quarterly, until I should attain the age of one-and-twenty years; and of his will constituted . . . . . and . . . . ., joint executors, as in and by the said will may appear; and whereas the said . . . . . and . . . . . did jointly accept of the said executorship and trust, and I, the said . . . . ., have attained my said age of twenty-one years; and whereas the said . . . . . and . . . . . have made up an account with me, the said . . . . ., of all moneys received and paid by the said . . . . . and . . . . . and all transactions in pursuance of the said executorship and trust, and have not only paid me, the said . . . . ., the balance of such accounts, but also delivered unto me all the writing and papers belonging to the estate of the said deceased . . . . . : Now know ye, that I, the said . . . . ., being fully satisfied in the premises, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto the said . . . . . and . . . . . and each of them, their and each of their executors and administrators, all reckonings and accounts, sum and sums of money, by them had and received in pursuance of the said trust, or by means of their being executors to the said . . . . . as aforesaid; and also of and from all other reckonings, accounts and demands, whatsoever, from the beginning of the world to the day of the date of these presents.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

*Release of Land by a Judgment Creditor.*

In the . . . . . court.

..... }  
against  
..... }

Judgment rendered the . . . . day of . . . ., 18.., in the . . . . court, against

said . . . . ., and in favor of said . . . . ., for the sum of . . . . dollars damages and . . . . dollars, costs of suit.

In consideration of . . . dollars, to me in hand paid, the receipt whereof is acknowledged, I do hereby remise, release and discharge, the following described land and premises, to wit: [description of the premises] from all claim to or interest in the same or any part thereof, which I may have, under and by virtue of the above-mentioned judgment, and from all lien or incumbrance that has attached to the same by reason of the recovery of the said judgment, as free and clear, in all respects, as though said judgment had not been rendered.

As witness, etc. [as in RELEASE OF ALL DEMANDS].

## REPAIRS.

**Repairs.**—That work which is done to an estate to keep it in good order.

When there is no **Express** agreement between the parties, the tenant is always required to do the necessary repairs. He is bound to put in windows or doors that have been broken by him, so as to prevent any decay of the premises; but he is not required to replace old by new.

An **Express** agreement, on the part of the tenant to keep a house in repair and leave it in as good plight as it was when the lease was made, does not bind him to repair the ordinary and natural decay.

When a **House** has been destroyed, by fire, neither the tenant nor the landlord is bound to rebuild, unless obliged by some agreement so to do. See **LANDLORD AND TENANT**.

## REPLEVIN.

**Replevin.**—A form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully.

In the **Practice** of the Pacific coast, the plaintiff files a complaint and affidavit, describing the property which he claims. If he desires the possession of the property before judgment, he files a bond and thereupon the sheriff will take the property into his possession, unless the defendant give another bond to retain the property

## REQUEST.

**Request.**—A notice of a desire on the part of the person making it that the other party shall do something in relation to a contract.

In **Some** cases, the necessity of a request is implied from the nature of the transaction ; as, where a horse is sold to A, to be paid for on delivery, A must show a request or impossibility on the part of the vendor to comply, if requested previous to bringing an action.

If the **Contract**, in terms, provides for a request, it must be made. It should be in writing and state distinctly what it is required to be done.

## RESIDENCE AND DOMICIL.

**Residence.**—Residence indicates permanency of occupation, as distinguished from lodging or boarding or temporary occupation.

**Domicil.**—That place where a man has his true, fixed and permanent, *home* and principal establishment, and to which, whenever he is absent, he has the intention of returning. Two things are necessary to establish a domicil—the fact of *residence* and the intention of *remaining*. These two must exist or must have existed in combination ; and herein lies the distinction between residence and domicil.

**Loss of Residence.**—A person who is domiciled in and has become a resident of a place, does not lose his residence by going to and stopping at another place, not to reside there permanently but only for a limited time.

**Domicil of Wife.**—The domicil of the husband is also the domicil of the wife.

**Intention.**—Residence depends upon intention as well as fact, and mere inhabitancy for a short period, against the intention of acquiring a domicil, would not make a resident within the meaning of the law so as to constitute an elector.



## RESPONDENTIA.

**Respondentia.**—A loan of money on maritime interest, on goods laden on board of a ship, upon the condition that if the goods be wholly lost, in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed upon.

If any Part of the goods arrive safely at the end of the voyage, the lender is entitled to have the proceeds applied to the payment of his debt. See BONDS.

## RIGHT OF WAY.

**Right of Way, Public.**—Every person has a right to travel when, where and as often as, he pleases, on any public street, highway, alley or lane. This is the law of all countries. In addition, rights of way may be acquired over the lands of another, by grant or prescription. When a grant is made and no dimensions of a way are expressed, sufficient will pass for the accomplishment of the object. If it be a foot-path only, it shall be reasonably wide for all persons to pass on foot, with such things as are usually carried by foot-passengers. If it be a way for teams and carriages, it shall be of sufficient height and breadth to admit of carriages of the largest size in common use, and high enough for loads of hay and other similar vehicles usually moved by teams. The grantee must keep it in repair. If it becomes impassable, the grantee has no right to deviate from his way and pass over the adjoining land. If he does, he becomes responsible as a trespasser.

**By Prescription.**—The adverse enjoyment of a right of way, for a period sufficiently long to acquire title to land by possession [which is five years in California], establishes an absolute right of way, and is a bar to any action brought by the owner of the land against the person using the way. To support such a right, the claim must be shown to have been *uninterrupted*. If A has adverse possession

and use for four years only, and then conveys his right or estate to B, who has adverse possession, for one year, the four years' possession of A cannot be added in order to make up the five years. Neither acts of *courtesy* nor *convenience* can give one a right of way over another's land.

**By Necessity.**—If a man having two parcels of land, to one of which he has no access except over the other, convey such *inaccessible* parcel, the grantee has a right of way to it over the other parcel, as incident to the grant. So, if the owner convey the accessible parcel, retaining the inaccessible one, a right of way to the latter over the former is reserved to the grantor. A person claiming a right by necessity, is entitled, however, only to a convenient way over the other's land and will have no right to pass over it whenever he pleases. He must select a suitable route for his way; but in doing it, he must regard the interest and convenience of the owner of the land; and when he has done it, he will be confined to the same way and may not change its course according to his wishes or caprice. Thus, if one has a right of way by necessity over the land of another, he is bound to use it so as to occasion the least possible inconvenience to the owner of the land. All that a person entitled to such an easement can reasonably claim, is a convenient way; and if this is allowed him by the owner of the land, he has no cause to complain. A right of way by necessity, cannot be claimed by one who has a way over his own ground, however inconvenient that may be.

**When Right Ceases.**—A way of necessity is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases; therefore, if at any subsequent period, the party formerly entitled to such way can approach the place to which it led, by passing over his own land by as direct a course as he would have done by using the old way, such way ceases to exist as of necessity.

**Highway.**—By the common law, the fee in the soil remains in the original owner where a public road is made upon it, but the use of the road is in the public. The owner parts with these only; for if the road should be vacated

by the public, he resumes the exclusive possession of the ground; while it is used as a highway he is entitled to the timber and grass which may grow upon the surface and to all the minerals which may be found below it. He may bring an action of trespass against any one who obstructs the road. There is a temporary right of way over the adjoining land if the highway be out of repair or be otherwise impassable, as by a flood.

**How Lost.**—It is a general rule of law and which finds no exception here, that whatever may be gained by possession or enjoyment may be lost by abandonment or non-use.

### RUNNING WATER.

**Running Water.**—Every man through whose land water passes, may use it for watering his cattle or irrigating, and he may do this either by dipping water from the brook and pouring it upon his land, or by making small sluices for the same purpose; but he must use it in this latter way so as to do the least possible injury to his neighbor, who has the same right. And where the owner of land through which a natural stream flows diverts the water for the purpose of irrigation, without returning the surplus into the natural channel, whereby the owner of land below, entitled to use the water in the same manner, is deprived of his privilege, an action lies. Streams of water are intended for the use and comfort of man, and every proprietor is entitled to a reasonable use of the water, and may apply it to domestic, agricultural and manufacturing, purposes, but not so as to destroy or materially diminish or affect the application of the water by the proprietors below on the stream.

**Several Owners.**—Where several owners of mill-seats on a running stream have a common and equal right to the use of the water, though no action lies against the owner of a mill above for any damage which the owner of a mill below may incidentally suffer from the reasonable use of the water by the former for his own benefit; yet the owner of the mill above has not an unlimited right to use the

water as he pleases, or to stop the natural flow of the stream, so as to destroy or render useless the mills below. And if he shuts down his gate, and detains the water for an unreasonable time, or lets it out in such unusual quantities as to prevent the owner of the mill below from using it, or deprive him of a reasonable and fair participation in the benefit of the stream, he is answerable for the damage thus sustained.

**The Owner** of an ancient mill may change the character and use of his mill at pleasure, without impairing his right to the water, if he does not thereby injure his neighbor's mill, and returns the water again to its ancient channel.

**By Prescription.**—The exclusive enjoyment of the use of water in a particular way for five years is sufficient to raise a presumption of title to such use; and it is not necessary that the water should have been used precisely in the same manner or to propel the same machinery. So, after five years of uninterrupted enjoyment of a spring of water, an absolute right to it is gained by the occupier of the close in which it issues above ground; and the owner of an adjoining close cannot lawfully cut a drain whereby the supply of water by the spring is diminished. A mill-privilege cannot be considered as extinguished or abandoned by disuse until such disuse, entire and complete, has continued five years.

**Priority.**—Mere priority of occupancy of the flowing water of a river creates no right; and an adverse enjoyment of water in a stream, for any period less than five years, is not sufficient to establish a right by prescription. Where a right exists to use a certain quantity of water, a change in the mode or objects of the use without increasing the quantity, is no violation of the right.

**Miner's Rights.**—The foregoing are the principles of the common law, but in mining cases the supreme court of California has recognized the custom of miners to a considerable extent, and have held that the first appropriator of water had the right to use it in any way, and might cut

off the stream entirely from those below him. By appropriating the head of the stream he became the owner of it and could use it as he pleased.

**Rights of First Locator or Appropriator.**—He who has first located his mining claim on the bank of a stream has the right to use the bed of the stream for the purpose of fluming or working his claim, and any subsequent erection, dam or embankment, which will turn the water back upon such claim, or hinder it from being worked with flumes or other necessary means or appliances, is an encroachment upon the rights of said first occupant, who is entitled to recover all damages consequent on such obstructions.

The First Appropriator of water for mining purposes is entitled to have the water flow without material interruption in its natural channel. And he is entitled to the water so undiminished in quantity as to leave sufficient to fill his ditch as it existed at the time of the subsequent appropriation of the stream above him. As to any deterioration in the quality of the water, by reason of being used for mining purposes before it reaches the ditch of the prior locator, it would not seem to be such a damage as any recovery can be had for.

**Parties are not Limited as to Quantity.**—Parties are not limited to the amount and quantity of water which they may have turned into their ditch in the first instance, unless, by its general size, plan, etc., it was incapable at the time of carrying more water than was at first appropriated. They may, at any reasonable time afterward, use more water, if necessary, in order to fill the ditch to its original capacity. But if they continue to use only the original quantity long enough to indicate that they intended to appropriate no more, they would be limited to that quantity.

## SALE OF BUSINESS.

**Sale of Business, Contract of.**—Such sales are probably more frequent in California and the other states of the Pacific coast, than in any other tract of country of equal pop-

ulation. Frequently the seller stipulates that he will not engage or be interested in the same or similar business at the same place, town, county or state, again within a limited time or never. Formerly it was different; but now it is settled that a contract never to engage in a *certain* business or calling is void, and will be disregarded by the courts. This is on the principle that the state has an interest in the well-being of every citizen, taken singly and in the aggregate. It would be detrimental to the interest of the whole, if any one citizen could, by his contract, forever debar himself from engaging in the business or profession he has learned, otherwise he might be a pauper and a state charge.

**Contract not to Engage in the same Business.**—For a valuable consideration, a seller may contract not to engage in the business he sells, within certain well-defined limits; and if those limits are reasonable [and it is for the courts to say whether they are], the contract will be sustained. It is safe to say, that a contract not to engage in the same business in a certain street or city for a certain time, is binding in law.

**Proof of Damages.**—When such contracts are violated it is always difficult to prove damages, and it is best to stipulate in the contract and under seal, that if the seller violates the contract in any way that he will pay to the purchaser a certain sum of money as *liquidated* damages and not as a penalty.

**Injunctions in Aid of Sale.**—In contracts of this kind, the courts would interfere by injunction and restrain the seller from violating his contract and engaging in the same business after he had contracted not to do so.

#### FORM.

*Covenant to be inserted in Bill of Sale where the Business is also Sold.*

And the said party of the first part further agrees, for the further consideration of . . . dollars, the receipt of which is hereby acknowledged, not to engage in or carry on, either directly or indirectly or be interested, in the following described business [here fully describe what is intended], within

the following defined limits, to wit: . . . , for the period of . . . from date. And if the party of the first part hereafter violates any of the covenants of this agreement herein stipulated to be kept by him, he hereby agrees to pay to the party of the second part the sum of . . . dollars, as *liquidated damages* and not as a *penalty*.

In witness, etc.

..... [L.S.]

## SALE OF GOODS.

**Sale of Goods, how Made.**—If any person agrees with another for goods, and the price is fixed, he must pay for them before he carries them away; for it is no sale without payment, unless it be expressly agreed to give credit. If the seller says the price of the goods is one hundred dollars and the purchaser says he will pay it, the sale is made and neither has a right to decline to pay or deliver. But if neither the whole nor any part of the money be paid nor the goods nor any part of them delivered nor an offer made nor the agreement put in writing, it is no sale and the owner may dispose of the goods as he pleases.

**No Sale is Complete**, so as to vest in the buyer an immediate right of property, so long as anything remains to be done between the seller and the buyer in relation to the goods, such as counting, weighing or measuring. But when either are done, so that the articles are separate and distinct, the bargain is struck and the property of the goods is vested in the vendee and remains at his risk.

So, if a Horse die in the interval of sale and delivery, the vendor is entitled to his money, though no actual change of property has taken place.

**How Transferred.**—It is important to know at what time and by what means the property of the thing sold is transferred from the seller to the purchaser and becomes vested in the latter. The question becomes of consequence in deciding at whose risk the goods were at the time of their loss—when the lien of the vendor for the purchase money ceases—and what is a sufficient delivery to take the case out of the statute of frauds [*i. e.* of preventing the necessity of having the sale in writing].

**The most Simple mode of transfer is by the actual delivery of the goods sold, by the vendor to the vendee; but it is often a matter of some difficulty to ascertain what particular facts amount to a delivery.**

If part of the Goods have been prepared and are then lost, the buyer must bear the loss. Thus, where a certain number of casks partly filled with turpentine were sold and by the terms of sale the casks were to be filled up, and in pursuance thereof part of them were filled when the whole were lost, it was held that as to the casks that were full the purchaser must bear the loss, and as to the others no property had passed and they were at the risk of the seller.

**Credit Sale.**—If goods are sold upon credit and nothing is agreed upon, as to the time of delivering the goods, the vendee is immediately entitled to the possession; this right of the purchaser may however be defeated by his becoming insolvent.

**Stoppage in Transitu.**—The question of the delivery of the goods to the purchaser or when they are deemed to be in his possession, becomes very important in cases of insolvency; for though goods are sold upon credit and have actually been sent to the purchaser, yet if the latter becomes insolvent the seller may stop the goods and hold them as security for the purchase money at any time before they are delivered to the buyer or come into his possession. This is called *stoppage in transitu*.

**Delivery.**—The delivery of a cent or glove is sufficient earnest within the statute. See **CONTRACTS**.

**Sale by Sample.**—A sample, if it diminishes the bulk of the commodity to be finally delivered, is a sufficient delivery; but if it be considered only as a specimen, forming no portion of the commodity, the delivery and acceptance will not be sufficient; the delivery of a *bill of parcels* or of the receipt, ticket, sale-note, certificate or stamp, will be sufficient constructive delivery. And also as respects *bulky* articles, the delivery of the key of the warehouse in which goods are deposited, the marking the purchaser's name on



the goods, the payment of warehouse rent, the assignment of a ship or bill of lading of goods at sea, the sale of lumber lying on a wharf or of logs lying within a boom, etc. Delivery of goods to an agent of the purchaser, such as a carrier, if with the knowledge and assent of the purchaser, is sufficient. See **SAMPLE**.

**Goods to be Manufactured.**—When an article is not in existence but is to be manufactured or made, no property passes to the purchaser until it is finished and ready to be delivered to him, though made by his special order or even if the price should already have been advanced. Until the thing is accepted by the purchaser he acquires no property in or right to claim it, and the maker may, if he choose, dispose of it to another person. But if made under the superintendence of a person appointed by the purchaser or if he find the materials, he would have a claim for the amount paid for the materials furnished or the cost incurred for superintendence.

**After Sale.**—When a sale has been made, it is the duty of the purchaser to take the goods, and when the seller has done all he has to do, the goods will remain in his possession at the risk of the buyer.

**It is the Duty of the seller to deliver the property.** If he does not, the purchaser may replevy them and thus gain possession. In doing so, he must prove that he has performed all the conditions on his part and especially that he has paid or tendered the price, unless the sale be on credit. In the latter case, the vendor has no lien and cannot refuse to deliver.

**Exchange of Goods.**—With respect to exchanges of goods there is no difference between sales and exchanges, but a delivery on one or both sides is essential to establish the contract. See especially **CONTRACTS**, under the head “Statutory Provisions,” as to contracts for and sale of goods; also, **WARRANTY** and **STOPPAGE IN TRANSITU**.

### SAMPLE.

**Sample.**—A small quantity of any commodity or mer-

chandise, exhibited as a specimen of a larger quantity called the bulk. When a sale is made by sample, and it afterwards turns out that the bulk does not correspond with it, the purchaser is not in general bound to take the property on a compensation being made to him for the difference.

## SEARCH WARRANTS.

**Search Warrant.**—A search warrant is an order in writing in the name of the people, signed by a magistrate, directed to a peace officer commanding him to search for personal property and bring it before the magistrate.

**When to Issue.**—It may be issued whenever property has been stolen or embezzled, in which case it may be taken on a warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled or of any other person in whose possession it may be.

**Probable Cause.**—No search warrant shall be issued but upon probable cause, supported by the affidavit naming or describing the person, and particularly describing the property and place to be searched

**Complainant to be Examined.**—The magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and take their depositions in writing and cause them to be subscribed by the parties making them.

**Facts showing Probable Cause.**—The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

**Issuance of Warrant.**—If the magistrate be satisfied of the existence of the grounds of the application or that there is probable grounds to believe their existence, he shall issue a search warrant, signed by him, with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified and bring it before the magistrate. See **MAGISTRATE**.

## SELF-DEFENSE.

**Self-defense.**—A man may defend himself and even commit a homicide for the prevention of any forcible and atrocious crime which, if completed, would amount to a felony.

**A Man may Defend Himself** when no felony has been threatened or attempted :

1st. When the assailant attempts to beat another and there is no mutual combat; as, when one meets another and attempts to commit or does commit an assault and battery on him, the person attacked may defend himself; and in case of an offer or attempt to strike another when sufficiently near so there is danger, the person assailed may strike first, and is not required to wait until he is struck.

2d. When there is a mutual combat upon a sudden quarrel. In these cases both parties are the aggressors, and if in the fight one is killed it will be manslaughter at least, unless the survivor can prove two things, viz: that before the mortal blow was given he had refused any further combat and had retreated as far as he could with safety, and that he killed his adversary from necessity to avoid his own destruction.

**A Man may defend himself against animals,** and he may during the attack kill them, but not afterwards.

See **CRIMES AND PUNISHMENTS** and **ASSAULT AND BATTERY**.

## SEPARATION.

**Separation, by Agreement.**—A cessation of cohabitation of husband and wife by mutual agreement is called, in law, "separation," and a written contract to separate is called a "deed of separation."

**By Trustee for Wife.**—Contracts of this kind are generally made by the husband for himself and by the wife with trustees. This contract does not interfere with the

marriage, and the parties may at any time after agree to live together as husband and wife.

**Reconciliation.**—Reconciliation after the separation supersedes special articles of separation in courts of law and equity. Whenever such articles have been signed and the separation had, it can be avoided at any time by the parties afterwards living together as husband and wife. See HUSBAND AND WIFE and ALIMONY.

### SET-OFF.

**Set-off.**—A demand which the defendant makes against the plaintiff in the suit for the purpose of liquidating the whole or part of his claim ; as, in an action to recover a stated sum, the defendant may show that the plaintiff is indebted to him any sum less or greater than the plaintiff's demand.

**Assignment not to Prejudice.**—In California, Nevada and Idaho, the following is the rule of set-off in certain cases : "In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment, but this shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due."

### SHERIFF.

**Sheriff, Election of.**—In every county a sheriff is elected at the general election every two years. In some counties he is *ex officio* tax collector, and in others he is not, and their bonds range all the way from ten thousand dollars to one hundred thousand dollars. A sheriff may require a bond of his deputies to secure himself against their unlawful acts.

**Duties of Sheriff.**—The sheriff is a conservator of the peace in his county. It is his duty within his county :

- 1st. To arrest and take before the nearest magistrate for

examination all persons who commit or attempt a public offense, in his presence, or who have committed a public offense.

2d. To prevent and suppress all affrays, breaches of the peace, riots and insurrections, which may come to his knowledge.

3d. To execute the process, writs, warrants and order of the courts of justice or of judicial officers, when delivered to him for that purpose.

4th. To attend in person or by deputy all courts, except justices', probate and recorders' courts, at their respective terms, held within his county, and to obey their lawful orders and directions.

5th. To serve at the request of a party to an action or proceeding notices and papers therein.

6th. In the execution of these duties, to command the aid of as many male inhabitants of his county as he may think proper or necessary.

**Keeper of Jail.**—He is the keeper of the county jail and is responsible for the management thereof and the safe-keeping of the prisoners.

**To Attend Court.**—The sheriff or his deputy is required to attend the sessions of court, to act as the crier thereof, to call the parties and witnesses and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court and of any other matter under its direction, also to serve the processes and execute the orders of the court as lawfully directed.

**Justification.**—A sheriff or other ministerial officer shall be justified in the execution of all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

**Directions to Sheriff.**—No direction or authority by a party or his attorney to a sheriff or to an under or deputy sheriff, in respect to the execution of process or return thereof or to any act or omission relating thereto, shall be

available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it be contained in a writing signed by the party to be charged or affected thereby or his attorney.

**Vacancy in Office.**—When the office of the sheriff is vacant, or when the sheriff is a party to the action or proceeding, the coroner shall act in his place; when the sheriff and coroner are both parties or the action is against either of these parties for disobedience of orders, the powers or orders in the action may be executed by a person designated by a judge, denominated an elisor.

**Former Sheriff.**—Notwithstanding the election and qualification of a new sheriff, the former sheriff is required to return all process and orders before and after judgment, which he has fully executed, and to complete the execution of all final process which he has begun to execute, and the collection of all taxes put into the hands of the sheriff for collection previous to the expiration of his term of office.

**Re-election.**—If a sheriff is re-elected to office he must file a new bond; and this is the rule in regard to all officers who are required by law to file an official bond.

#### FORMS.

##### *Form of Sheriff's Return as to Garnishments.*

On the .... day of ....., 18.., I served on and delivered to .... a copy of the within execution with a notice in writing hereto annexed, signed by me, whereof the following is a true copy:

To .....: You are hereby notified that by virtue of a writ of execution issued out of the .... court of the .... judicial district in and for the county of ..... in favor of .... vs. ...., to me directed and delivered, of which the foregoing is a true copy, I have levied upon, seized and attached, in execution, all debts by you owing to the said ....., and the rights, credits and other personal property, in your possession or under your control, belonging to the said ....., defendant in execution

[Signed]

.....,

Sheriff of ..... county.

On the .... day of ....., 18.., I made the same service in all respects on ..... , etc., etc.

And so I did levy on, seize and attach, in execution, all debts owing to the defendant, ... , by ..... , etc., etc., and all the rights, credits and personal property, in your possession or under your con-

trol, belonging to the said defendant, ...., the defendant in the within execution.

[Signed] .....

[Date] Sheriff of ..... county.

*Sheriff's Bail Bond.*

State of ..... }  
county of ..... } ss.

Whereas, in a certain action in the ..... court of the .... judicial district in and for the county of ....., in which ..... is plaintiff and ..... is defendant, an order was duly made and delivered to the sheriff of the county of ..... requiring him forthwith to arrest the said defendant and hold him to bail in the sum of .... dollars, and the said sheriff having arrested the said defendant and taken him into custody by virtue of the said order;

Now, therefore, we, ...., residing at ....., in the county of ....., by occupation a ....., and ...., residing at ..... in the said county, by occupation a ....., are jointly and severally bound in the sum of .... dollars, the amount in the said order of arrest mentioned, that the said defendant shall at all times render himself amenable to the process of the said court during the pendency of the said action and to such as may be issued to enforce the judgment therein, or that we will pay to the said plaintiff the amount of any judgment which may be recovered in the said action.

[Signed] .....

Witness,

.....

Dated the .... day of ....., 18..

*Bond of Indemnity to Sheriff.*

Know all men by these presents, that we, ...., as principal, and ..... and ....., as sureties, are held and firmly bound unto ...., sheriff of the county of ....., in the sum of .... dollars, lawful money of the United States of America, to be paid to the said sheriff or his certain attorney, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the .... day of ....., A.D. 18..

Whereas, under and by virtue of a writ of attachment issued out of the .... district court, in the action of ... .., plaintiff, against ... .., defendant, directed and delivered to said ...., sheriff of the county of ....., the said sheriff was commanded to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand; and the said sheriff did thereupon attach the following goods and chattels [here insert statement].

And, whereas, upon the taking of the said goods and chattels by virtue of the said writ, the said .... claimed the said goods and chattels as his

own property, and thereupon a jury was summoned by the said sheriff to try such claim, which said jury have by their finding decided in favor of said claim; and, whereas, the said plaintiff, notwithstanding such finding, requires of said sheriff that he shall retain said property under such attachment and in his custody:

Now, therefore, the condition of this obligation is such that if the said ..... and ....., their heirs, executors and administrators, shall well and truly indemnify and save harmless him, the said sheriff, his heirs, executors and administrators, of and from all damages, expenses, costs and charges, and against all loss and liability which he, the said sheriff, his heirs, executors and administrators, shall sustain or in any wise be put to for or by reason of the retention by him, the said sheriff, in his custody under said attachment of the property claimed as aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.

[Signed] ..... [L.S.]

..... [L.S.]

..... [L.S.]

Sealed and delivered in the presence of

.....

#### *Certificate of Sale of Real Estate on Execution.*

In the district court of the ..... judicial district in and for the county of ..... of the state of .....

..... }  
against  
..... }

I, ....., sheriff of the county of ....., do hereby certify that by virtue of an execution in the above cause tested the .... day of ...., A.D. 18.., by which I was commanded to make the amount of .... dollars to satisfy the judgment in this action with costs and interest thereon out of the personal property of the above defendant, and, if sufficient personal property could not be found, then out of the real property belonging to the said defendant, on the .... day of ...., 18.., or at any time thereafter, as by the said writ; reference being thereto had, more fully appears, I have levied on and this day sold at public auction, according to the statute in such case made and provided, to ...., who was the highest bidder, for the sum of .... dollars, which was the whole price paid by him for the same, the real estate described as follows, to wit [description]:

That the price of each distinct lot and parcel was as follows: parcel number .... dollars, parcel number .... dollars; and that the said real estate is subject to redemption, pursuant to the statute in such case made and provided.

Given under my hand, this .... day of ...., A.D. 18..

[Signed]

.....

Sheriff.

#### *Certificate of Sale under an Order of Sale.*

I, ....., sheriff of the county of ....., in the state of ....., do hereby certify that under and by virtue of an order of state issued out of the



district court of the .... judicial district in and for the county of ..... of the said state, in the action of ..... against ..... , duly attested the .... day of ...., A.D. 18.., and to me, as such sheriff, duly directed and delivered, whereby I was commanded to sell the property hereinafter described, according to law, and to apply the proceeds of such sale towards the satisfaction of the judgment in said action, amounting to the sum of .... dollars with interest and costs of suit, I duly levied on, and on the .... day of ....., A.D. 18.., at .... o'clock, ...., at the court-house doors in the county of ..... I duly sold at public auction, according to law and after due legal notice, to ..... , who made the highest bid therefor at such sale, for the sum of .... dollars, which was the whole price paid, the real estate in said order of sale described as follows, to wit [description].

And I do hereby further certify that the said property was sold in one parcel, that the said sum of .... dollars was the highest bid made and the whole price paid therefor, and that the same is subject to redemption, pursuant to the statute in such case made and provided.

Given under my hand this .... day of .... A.D. 18..

.....  
Sheriff, etc.

*Sheriff's Deed on Sale under Execution.*

This indenture, made this ... day of ...., A.D. 18.., between ..... , sheriff of the county of ...., of the first part, and ..... , of the county of ...., and state of ...., of the second part: Whereas, by virtue of a writ of execution issued out of and under the seal of the ... court of the .... judicial district, of the state of ...., in and for the said county, tested the .... day of ...., A.D. 18.., upon a judgment recovered in said court on the .... day of ...., A.D. 18.., in favor of .... and against ...., to the said sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor in his bailiwick, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor could not be found, that then he should cause the amount of said judgment to be made out of the lands, tenements and real property, belonging to him, on the .... day of ...., A.D. 18.., or at any time afterward: and whereas, because sufficient personal property of the said judgment debtor could not be found, whereof he, the said sheriff, could cause to be made the moneys specified in said writ, he the said sheriff did, in obedience to said command, levy on, take and seize, all the estate, right, title and interest, which the said judgment debtor so had of, in and to, the lands, tenements, real estate and premises, hereinafter particularly set forth and described, with the appurtenances, and did, on the .... day of ...., A.D. 18.., sell the said premises at public vendue, in front of the ...., in said county, between the hours of .... in the morning and .... in the afternoon of that day, namely, at twelve o'clock at noon, after having first given notice of the time and place of such sale, by advertising the same according to law; at which sale the said premises were struck off and sold to ..... , for the sum of .... dollars, he, the said ...., being the highest bidder, and that being the highest sum bidden, and the

whole price paid for the same ; and whereas, the said sheriff, after receiving from said purchaser the said sum of money so bidden as aforesaid, gave to him such certificate as is by law directed to be given, and filed in the office of the recorder of the county of ..... a duplicate of such certificate ; and whereas, .... months after such sale have expired, without any redemption of the said premises having been made :

Now this indenture witnesseth, that ..... the sheriff aforesaid, and party hereto of the first part, by virtue of the said writ, and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above-mentioned, to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm, unto the said ..... his heirs and assigns, all the estate, right, title and interest, of the said ..... which he had on the said .... day of .... A.D. 18., or at any time afterward or now has of, in and to, all the following described premises, viz : [description], together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the above-mentioned and described premises with the appurtenances, unto the said ..... his heirs and assigns forever, as fully and absolutely as he, the sheriff aforesaid, can, may or ought to, by virtue of the said writ and of the statute in such case made and provided grant, bargain, sell, release, assign, convey and confirm, the same.

In witness whereof, the said sheriff, the party of the first part, to these presents hath hereunto set his hand and seal, the day and year first above written.

....., [L.S.]  
Sheriff, etc.

Sealed and delivered, in the presence of

.....

State of ..... }  
county of ..... } ss. .

On this .... day of ...., A.D. one thousand eight hundred and ....., before me, ...., a notary public in and for said county, personally appeared ..... sheriff of the county of ...., to me personally known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he, as sheriff aforesaid, executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

.....,  
Notary public.

#### *Sheriff's Deed of Property on Mortgage.*

This indenture, made this .... day of ...., A.D. 18., between ..... sheriff of the county of ...., of the first part, and ..... of the county of ...., of the second part, witnesseth :

Whereas, in and by a certain judgment or decree, made and entered by the

district court of the .... judicial district of the state of ...., in and for the county of ...., on the .... day of ...., A.D. 18.., in a certain action then pending in said court, wherein .... was plaintiff, and ..... and ..... etc., were defendants, it was among other things ordered, adjudged and decreed, that all and singular the mortgaged premises described in the complaint in said action, and specifically described in said judgment or decree, be sold at public auction by the sheriff of the county of ...., in the manner required by law and according to the course and practice of said court, that such sale be made in front of the ..... in the county of ...., between the hours of .... o'clock in the forenoon and .... o'clock in the afternoon on such day as the said sheriff shall appoint, that any of the parties to said action might become the purchaser at such sale, and that said sheriff execute the usual certificates and deeds to the purchaser or purchasers, as required by law.

And whereas, the said sheriff did, at the hour of ..... o'clock at noon, on the .... day of ...., A.D. 18.., after due public notice had been given, as required by the laws of this state and the course and practice of said court, duly sell at public auction in the city of ...., agreeably to the said judgment or decree and the provisions of law, the premises in the said decree or judgment mentioned, at which sale the .... premises in said judgment and decree, and hereinafter described, were fairly struck off to ..... the party hereto of the second part, for the sum of ..... dollars, he being the highest bidder, and that being the highest sum bidden for the same; and whereas, the said party of the second part thereupon paid to the said sheriff the said sum of money so bidden by him; and whereas, the said sheriff thereupon made and issued the usual certificate in duplicate of the said sale in due form of law, and delivered one thereof to the said purchaser, and caused the other to be filed in the county recorder's office of ..... county; and whereas, more than six months have elapsed since the date of said sale, and no redemption has been made of the premises so sold as aforesaid, by or on behalf of the said judgment debtor, the said ....., or by or on behalf of any other person:

Now this indenture witnesseth, that the said party of the first part, the said sheriff, in order to carry into effect the sale so made by him as aforesaid, in pursuance of said judgment or decree, and in conformity to the statute in such case made and provided, and also, in consideration of the premises and of the said sum of ..... dollars so bidden and paid to him by the said purchaser, the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey, unto the said party of the second part and to his heirs and assigns forever, all that certain lot of land in said county of ..... [here insert description], together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof, and also all the estate, right, title and interest, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, and of the said defendant, ..... of, in and to, the above-described premises, and every part and parcel thereof.

To have and to hold, all and singular, the premises above-mentioned and described, and hereby conveyed or intended so to be, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

In witness whereof, the said party of the first part to these presents, hath hereunto set his hand and seal, the day and year first above written.

Sealed and delivered, in the presence of

..... [L.S.]

.....

*Sheriff's Deed, for Land sold on Execution to satisfy Balance due after Mortgage Sale.*

This indenture, made this .... day of ...., A.D. one thousand eight hundred and ...., between ...., sheriff of the county of .... and state of ...., acting in his official capacity as such, party of the first part, and ...., of the county of .... and state aforesaid, party of the second part, witnesseth :

Whereas, by a certain writ of execution issued out of the district court of the .... judicial district, in and for .... county in said state, directed and delivered to the said party of the first part, sheriff as aforesaid, tested the .... day of ...., A.D. one thousand eight hundred and ...., he, the said sheriff, was commanded to satisfy the deficiency or balance due on a certain judgment rendered and docketed in the above-named court, in the action of said .... vs. ...., which said deficiency was the sum of .... dollars, together with interest, costs and accruing costs, out of the personal property of the said ...., or, if sufficient could not be found, then out of the real property belonging to him, on the day when the said judgment was docketed in the aforesaid county of .... or at any time thereafter; and whereas, the said ...., sheriff as aforesaid and party of the first part hereto, after receiving said writ and before the return day thereof, did, by virtue of the same, levy and seize and take the lands hereinafter described for want of sufficient personal property to satisfy the said deficiency or balance due on said judgment, and did, in pursuance of and in all respects conformably with the above-recited execution and of the statute in such case made and provided, on the .... day of ...., A.D. one thousand eight hundred and ...., in front of the court-house door in ...., in said county of ...., sell at public auction, all and singular the premises hereinafter described, in separate and distinct tracts or parcels, as the same are hereinafter described, having first given due public notice of the time and place of sale, in the manner prescribed by law, at which sale all and singular the premises hereinafter described and mentioned as aforesaid were struck off to the said ...., party of the second part hereto, for the aggregate amount of .... dollars, namely : the tract of land firstly hereinafter described, for the sum of .... dollars (\$....); the tract of land secondly hereinafter described, for the sum of .... dollars (\$....) and the tract of land thirdly hereinafter described, for the sum of .... dollars (\$....), the said .... the party of the second part hereto being the highest and best bidder for each of said tracts of land, and those several sums being the highest sums bidden and the

whole price paid therefor, making in the aggregate the said sum of .... dollars. And whereas, after receiving from the said purchaser the said sum of money by him so bidden as aforesaid, the said ...., sheriff as aforesaid, gave to him, the said ...., purchaser as aforesaid, a certificate of sale in the form required by law; and a duplicate thereof was duly filed in the office of the county recorder of the said county of ...., the said premises sold being subject to redemption, and the time for the redemption thereof prescribed by law having now expired and the same not being redeemed: Now, therefore, this indenture witnesseth, that the said ...., sheriff of the said county of .... and party of the first part to these presents, in order to carry into effect the said sale, made in pursuance of the execution aforesaid and by virtue of the statute in such case made and provided, in consideration of the premises and of the sum of .... dollars so bidden and paid at the time of the sale, by the said party of the second part to the said ...., sheriff as aforesaid, the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, the real estate described as follows, to wit: [here insert description], and also all the estate, right, title, interest, trust, property, claim and demand, which the said ... had in the said several tracts or parcels of land or any part thereof, on the .... day of ...., A.D. 18.., being the day when the said judgment was docketed in the aforesaid county of .... or upon the day when the aforesaid levy was made, under and by virtue of the herein-before-mentioned execution or had at any time since or now hath; to have and to hold the said above-granted and described tracts of land and premises and every part and parcel thereof, with the rights, privileges, hereditaments and appurtenances, thereto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part, in his official capacity of sheriff as aforesaid and under the authority aforesaid, may, can or ought, to grant, sell or convey, the same.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first herein-before written.

[Signed]

..... [L.S.]

Sheriff, etc.

Sealed and delivered in presence of

.....

## SHIP-OWNERS.

**Ship-owners.**—The following is the act of congress, of March, 1851. It is in force everywhere in America and is universal in its application. The entire act is inserted below:

**Liability of Owner.**—No owner or owners of any ship or

vessel shall be subject or liable to answer for or make good to any one or more person or persons any loss or damage which may happen to any goods or merchandise whatsoever, which shall be shipped, taken in or put, on board any such ship or vessel, by reason or by means of any fire happening to or on board the said ship or vessel, unless such fire is caused by the design or neglect of such owner or owners: *provided*, that nothing in this act contained shall prevent the parties from making such contract as they please extending or limiting the liability of ship-owners

If any Shipper or Shippers of platina, gold, gold-dust, silver, bullion or other precious metals, coins, jewelry, bills of any bank or public body, diamonds or other precious stones, shall lade the same on board any ship or vessel, without at the time of such lading giving to the master, agent, owner or owners, of the ship or vessel receiving the same, a note, in writing, of the true character and value thereof and have the same entered on the bill of lading therefor, the master and owner or owners of the said vessel shall not be liable as carriers in any form or manner. Nor shall any such master or owners be liable for any such valuable goods beyond the value and according to the character thereof so notified and entered.

**Loss by Embezzlement.**—The liability of the owner or owners of any ship or vessel, for any embezzlement, loss or destruction, by the master, officers, mariners, passengers or any other person or persons, of any property, goods or merchandise, shipped or put on board any such ship or vessel, or for any loss, damage or injury, by collision or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners, respectively, in such ship or vessel and her freights then pending.

If any such Embezzlement, loss or destruction, shall be suffered by several freighters or owners of goods, wares or merchandise, or any property whatever on the same voyage,

and the whole value of the ship or vessel and her freight for the voyage shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel in proportion to their respective losses; and for that purpose the said freighters and owners of the property and the owner or owners of the ship or vessel or any of them, may take the appropriate proceedings in any court for the purpose of apportioning the sum for which the owner or owners of any ship or vessel may be liable, among the parties entitled thereto. And it shall be deemed a sufficient compliance with the requirements of this act on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel or freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer all claims and proceedings against the owner or owners shall cease.

**Who deemed Owner.**—The charterer or charterers of any ship or vessel, in case he or they shall man, victual and navigate, such vessel at his or their own expense or by his or their own procurement, shall be deemed the owner or owners of such vessel within the meaning of this act, and such ship or vessel, when so chartered, shall be liable, in the same manner as if navigated by the owner or owners thereof.

**Negligence or Fraud.**—Nothing in the preceding sections shall be construed to take away or affect the remedy to which any party may be entitled against the master, officers or mariners, for or on account of any embezzlement, injury, loss or destruction, of goods, wares, merchandise or other property, put on board any ship or vessel or on account of any negligence, fraud or other malversation, of such master, officers or mariners, respectively, nor shall anything herein lessen or take away any responsibility to which any master or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of such ship or vessel.

**Shippers of Inflammable Matter.**—Any person or persons shipping oil of vitriol, unslaked lime, inflammable matches or gunpowder, in a ship or vessel taking cargo for divers persons on freight, without delivering at the time of shipment a note, in writing, expressing the nature and character of such merchandise to the master, mate, officer or person, in charge of the lading of the ship or vessel, shall forfeit to the United States one thousand dollars.

This act shall not apply to the owner or owners of any canal-boat, barge or lighter, or to any vessel of any description, whatsoever used in river or inland navigation.

### SIGNATURE.

**Signature.**—By signature, is understood the act of putting down a man's name at the end of an instrument, to attest its validity.

It is not Necessary that a party should write his name himself to constitute a signature; his mark is now held sufficient, though he was able to write.

The Signature is usually made at the bottom of the instrument; but in wills, it has been held that when a testator commenced his will with these words: "I, A B, make this my will," it was a sufficient signing.

### STOPPAGE IN TRANSITU.

**Stoppage in Transitu.**—The phrase "stoppage in transitu" means this: A vendor of goods who has forwarded the same to the purchaser of them and after they are sent on their way learns that the purchaser is *insolvent*, may stop the delivery of them and hold them as security for the purchase money of the *identical goods*. This may be done at any time before they are delivered to the purchaser by the carrier of them. If they are either actually or constructively delivered, the right to stop them has ceased.

**What Constitutes a Delivery.**—If goods are placed on the dock or wharf or in the warehouse or store or in a



neighbor's warehouse, with a delivery of the key to the purchaser, or if they be delivered to a general agent of the purchaser, the delivery is as complete as if they were delivered into the hands of the purchaser.

**In what Cases they may be Reclaimed and in what Manner.**—Goods can be stopped *in transitu* only in cases of *insolvency*, and only by actually retaking the goods into possession. Goods are usually retaken by giving notice to the carrier or other person in whose possession they be not to deliver them but to hold them for the vendor.

**How Stoppage may be Avoided.**—When goods are so stopped the vendee may retake the goods by payment of the price. If, after the goods are forwarded but before delivery and before they are stopped, the purchaser for a valuable consideration, in good faith, resells the goods "to arrive" by indorsement and delivery of the bill of lading, the purchaser, if he is innocent of fraud, holds the goods clear of all claims of the vendor.

**What the Vendor should Do.**—When the vendor has retaken possession of the goods he should sell them after reasonable notice to the vendee, and out of the proceeds pay his debt and account to the vendee for the residue if any remains.

## FORM.

*Notice of Stoppage in Transitu to be given by the Seller of Goods to the Carrier, Middleman, Wharfman or other Person, in whose Possession they may be before Delivery.*

To ..... , at .....

You will please take notice, that the following described goods [description of goods as per bill], now in your possession, which were shipped by the undersigned on the .... day of ....., 18.., through you to .... [or, "the firm of ..... & Co."] at the city of ....., are unpaid for and their price is now due us, and you are hereby notified not to deliver the same to the said ..... as he has become insolvent; but you are hereby directed to return said goods to us [or, "to store them at ..... in our name"] without delay. Hereof fail not.

[Signed]

.....

[Date]

## SUPERVISORS.

## CALIFORNIA AND NEVADA.\*

**Supervisors, Board of.**—The statute provides that there shall be in each of the counties of the state a board of supervisors. In some of the counties the number of supervisors is three and in others five or more. There are so many special and purely local laws on this subject that it is impracticable to state even their leading provisions in this work. The law, as herein set down, is general and in addition to local laws.

**Power and Jurisdiction.**—The said boards shall have power and jurisdiction in their respective counties :

1st. To make orders respecting the property of the county in conformity with any law of this state and to take care of and preserve such property.

2d. To examine, settle and allow, all accounts legally chargeable against the county and to levy for the purposes prescribed by law such taxes as may be authorized by law.

3d. To examine and audit the accounts of all officers having the care, management, collection or disbursement, of any money belonging to the county or appropriated by law or otherwise for its use and benefit.

4th. To lay out, control and manage, public roads, turn-pikes, ferries and bridges, within the county in all cases where the law does not prohibit such jurisdiction, and to make such orders as may be necessary and requisite to carry its control and management into effect.

5th. To take care of and provide for the indigent sick of the county.

6th. To divide the county into townships and to change the division of the same, and to create new townships, as the convenience of the county may require.

7th. To establish and change election precincts and to appoint inspectors and judges of elections

\* In Nevada and Idaho, "county commissioners" are the same as California supervisors.

8th. To control and manage the property, real and personal, belonging to the county and to receive by donation any property for the use and benefit of the county.

9th. To lease or purchase any real or personal property necessary for the use of the county: *provided*, no purchase of real property shall be made unless the value of the same be precisely estimated by three disinterested persons, to be appointed by the county judge.

10th. To sell at public auction, at the court-house of the county, after at least thirty days' previous notice, and cause to be conveyed, any property belonging to the county, appropriating the proceeds of such sale to the use of the same.

11th. To cause to be erected and furnished a court-house, jail and such other public buildings, as may be necessary, and to keep the same in repair.

12th. To control the prosecution and defense of all suits to which the county is a party.

13th. To do and perform all such other acts and things as may be strictly necessary to the full discharge of the powers and jurisdiction conferred on the board.

**Board of Canvassers.**—The board acts as canvassers, and declares the result of elections held in their county, and causes certificates of election to issue to all officers elected, except county clerk.

**May require New Bonds of Officers.**—They may require new bonds of any county or township officer with additional sureties whenever they deem the same necessary, and may require of all officers intrusted with public funds a quarterly report, and may examine their books, and shall prosecute them for delinquencies.

**Taxes and Equalization.**—They shall levy all taxes authorized by law, and at the proper time equalize them as required by law.

**Vacancy in Office of Supervisor.**—Whenever a vacancy occurs in the board of supervisors of any county, from failure to elect or otherwise, the county clerk of the county

shall call a special election to be held after ten days' public notice to fill such vacancy. [Same in Nevada, except the governor appoints a commissioner to hold until the next general election.]

**Vacancies in County and Township Offices.**—Whenever a vacancy shall occur in, or the qualified electors of the county shall fail to elect to, any county or township office, other than county judge or supervisor, the board of supervisors shall, at any meeting of the board, appoint some suitable person an elector of the county or township to fill the vacancy until the election and qualification of a successor. No appointment shall be made except upon petition, signed by not less than thirty qualified electors of the county if for a county office, or by not less than fifteen of the qualified electors of the township if for a township office. [Same in Nevada, except no petition is required.]

**Supervisors not to be Interested in Contracts.**—No supervisor shall be interested in any property purchased for the use of the county, or the purchase or sale of any property belonging to the county, nor in the erection of public buildings, or the opening of roads or the building of bridges. A violation of these provisions is a misdemeanor.

**Suits against County.**—No person shall sue a county in any case or for any demand, unless he shall first present his claim or demand to the board of supervisors for allowance. If the demand is rejected the county may be sued, and if in such action the plaintiff fail to recover more than the board offered to allow he shall not recover costs.

**Claims for Services.**—All claims for services and items of account of a similar nature presented by any one person to the board shall be included in one account. Any citizen tax-payer may appear before the board and oppose any claim.

#### IDAHO.

**Number, etc.**—The board of commissioners consists of three members, who hold office for three years. They must

hold their sessions as required by law, but no session shall be continued for a longer period than six days. They receive six dollars a day for each day's services.

**Powers.**—They have power and it is their duty :

1st. To provide for the erection and repairing of court-houses, jails and other necessary public buildings, for the use of the county.

2d. To lay out, discontinue or to alter, county roads and highways within their respective counties and to do all other acts relating thereto.

3d. To license and fix the rates of ferriage and tolls authorized by law.

4th. To fix the amount of taxes to be assessed according to the provisions of law and to cause the same to be collected.

5th. To allow all amounts chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection and disbursement, of any money belonging to the county or appropriated to its benefit.

6th. To have the care of the county property and the management of its funds and business, except in cases otherwise provided for, and shall have no other powers except such as are or may be given by law.

**Sale of Real Estate.**—Real estate belonging to the county shall be sold by an agent duly appointed by the order directing the sale.

**Duties.**—They shall provide offices and books for the various officers, examine the accounts and vouchers of the treasurer and auditor, count the county funds and make statement of receipts and expenditures and post the same at the court-house door and two other places and publish the same. They shall appoint election precincts and new ones on petition of twenty voters resident more than ten miles from any place of election.

**Review.**—Any person may appeal from any decision of the commissioners to the next term of the district court of

the same county. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken at least ten days before the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the commissioners or left with the clerk of the board; and the party appealing shall give bond to the county with one or more sureties conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

#### OREGON.

**Election and Duties.**—In Oregon, two commissioners of the county court are elected in each county at a general election, whose term of office is two years. These commissioners and the county judge constitute a board of county commissioners to attend to the financial affairs of the county. They have the same general powers as in California.

#### SUPPORT.

**Support.**—The right of support is an easement which one man either by contract or prescription enjoys to rest the joints or timbers of his house upon the wall of an adjoining building owned by another person. A right to the support of one's land so as to prevent its falling into an excavation made by the owner of adjacent lands.

**In Another Sense,** the right to support is the right of a wife or child to maintenance out of the husband's and father's property.

#### SURETIES.

**Sureties on Official Bonds.**—The sureties on the bond of a state officer must be residents and freeholders or householders within this state, and on the bond of a county officer they must be residents and freeholders or householders within such county or within an adjoining county.

**Arrest and Bail, Civil Practice.**—In all cases where bail

is given on arrest for debt each of the sureties shall be a resident and householder or freeholder within the county.

**In Actions of Replevin.**—[The same as in arrest for debt.]

**On Attachment.**—No qualification as regards residence is required, nor need the sureties be freeholders or householders.

**On Release of Attachment.**—[The same as on arrest for debt.]

**On Bonds for Costs.**—[The same as on arrest for debt.]

**In Criminal Cases.**—Each surety must be a resident and a householder or freeholder within the state ; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered. See **HOUSEHOLDER—FREEHOLDER and RESIDENT.**

## SURETYSHIP.

**Suretyship.**—An undertaking to answer for the debt, default or miscarriage, of another, by which the surety becomes bound as the principal or original debtor is bound. It differs from a guaranty, in this, that suretyship is a primary obligation to see that the debt is paid, while guaranty is a collateral understanding, essentially in the alternative, to pay the debt if the debtor does not pay it.

**In California, Nevada and Idaho,** a contract to answer for the debt, default or miscarriage, of another is void, unless the contract be in writing, signed by the party to be changed, and expressing the consideration. See **CONTRACTS.**

## TARE.

**Tare.**—An allowance in the purchase and sale of merchandise for the weight of the box, bag or cask or other thing, in which the goods are packed. It is also an allowance made for any defect, waste or diminution, in the weight, quality or quantity, of goods.

## TENANTS IN COMMON.

**Tenants in Common.**—Tenants in common are such as hold lands by several and distinct titles, and not by a joint title, but occupy in common—the only unity recognized between them being that of possession. They are accountable to each other for the profits of the estate, and if one of them turns another out of possession an action of ejection will lie against him. They may also sue each other in disputes regarding the tenancy. If they were partners they could not.

## TENDER.

**Tender.**—An offer to deliver something made in pursuance of some contract or obligation, under such circumstances as to require no further act from the party making it to complete the transfer.

**Tender of Money** must be made by some person authorized by the debtor to the creditor or to some person authorized, and who must have capacity to receive it and in lawful coin or legal tender of the country. The exact amount due must be tendered, though more than the amount due may be tendered, as the greater always includes the less.

**When a Tender is Made**, it is best to state the amount. It must be at the time and place agreed upon. If no place is agreed upon, tender may be made wherever the creditor may be found. The money must be *produced and offered*, unless the creditor declines beforehand to receive it.

**Tender of Specific Articles** must be made to the person authorized to receive them, at a proper time. The place or delivery is to be determined by the contract or, in the absence of an agreement, by the situation of the parties and circumstances of the case. In all cases of tender, the articles must be set apart and distinguished so as to admit of identification by the creditor. It must be made during



daylight, and the articles must be at the place till the last hour of the day unless tender is waived. See **LEGAL TENDER**.

### TIDE-WATER.

**Tide-water.**—The term “tide-water” is not limited to water which is salt, but embraces also so much of the water of fresh rivers as is propelled backwards by the ingress and pressure of the tide.

The Bed of tide-waters belongs to the state in which they lie and the waters themselves are public, so that all persons may use the same for the purposes of navigation and fishery, unless restrained by law.

### TITLE.

**Title.**—The means whereby the owner of lands has the possession of his property.

**A Bad Title** is one which conveys no property to the purchaser of an estate.

**A Doubtful Title** is one which the court does not consider to be so clear that it will enforce its acceptance by a purchaser nor so defective as to declare it a bad title; but only subject to so much doubt that a purchaser ought not to be compelled to accept it.

**A Good Title** is that which entitles a man by right to a property or estate and to the lawful possession of the same.

**In General**, possession constitutes the criterion of title of personal property, because no other means exist by which a knowledge of the fact to whom it belongs can be attained.

### TRESPASS.

**Trespass.**—Trespass is defined to be any wrongful act of one man whereby another is injuriously treated or damaged. Any unlawful act committed with violence, actual or implied, to the person, property or rights, of another,

or any unauthorized entry upon the realty of another to the damage thereof.

**What amount to Trespasses.**—In determining the nature of the act, neither the amount of violence nor the intent with which it is offered, nor the extent of the damage accomplished or the purpose for which the act was committed, are of any importance. If a person enters upon the land of another, without leave, to drive off stock that escaped from him and who breaks even a blade of grass in so doing, commits a trespass.

**Of the Damage done.**—To constitute a trespass some damage must be done. But, strictly, as we have seen, every unauthorized act is a trespass and entitles the complainant to some damage if the least injury results, yet the law regards not trifles, and a court or jury would seldom find for a plaintiff if the trespass proved was a peaceful entry, made in good faith and with no intention to hold possession or interfere in any way with the peaceful enjoyment of plaintiff, and especially if the action appeared to be vexatious.

**Entry with Force.**—If the entry is with force, or peacefully under a claim of right, the plaintiff prevailing is entitled to his actual damages proved. Such forcible entry is said to be done “with force and arms,” or, as the law-writers say: “*vi et armis*.”

**Injuries to the Person.**—Assault and battery, wounding, false imprisonment or any direct injury, to the person of another unlawfully done, is a trespass and actionable.

**Justification of.**—Damages cannot be recovered where the defendant shows a justification sufficient to excuse the act committed though he acted without authority from the owner or person affected. Accident will in some cases excuse a trespass. Should an accident to a stage-coach upset the passengers into a garden it would be inequitable to make them pay damages for the trespass on the garden and at the same time suffer the personal injuries usually accompanying such accidents. See ASSAULT AND BATTERY.

**Cutting or Carrying away Trees.**—The statutes of Cali-

fornia, Nevada and Idaho, contain the following: Any person who shall cut down or carry off any wood or underwood, tree or timber, on the land of another person or on the street or highway in front of any person's house, village or city lot or cultivated grounds, on the commons or public grounds of any city or town or on the street or highway in front thereof, without lawful authority, shall be liable to the owners of such land or to such city or towns, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

**Measure of Damages.**—Nothing contained in the foregoing shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland, for the repair of a public highway or bridge, upon the land or adjoining it.

### USAGE.

**Usage.**—Long and uniform practice. Usage of trade does not require to be immemorial to become established. If it be known, certain, uniform, reasonable and not contrary to law, it is sufficient. But evidence that a thing has been done in few instances, does not establish a usage.

The Usages of Trade afford ground upon which a proper construction may be given to contracts; and when usage is established, it has all the authority of written law. The common law has its foundation in usage. See COMMON LAW.

### VACCINE AGENT.

**Vaccine Agent.**—The statutes of California contain the following: The governor of this state is hereby authorized and required to appoint an agent, who shall be a graduate in medicine, whose duty it shall be to apply to and obtain from the vaccine agent of the United States, created under an act of congress, passed February, one thousand eight hundred and thirteen, or if no such agent is now acting, to obtain from any other source practicable a supply of the

the costs of prosecution and commitment, including his support whilst so confined or upon giving bond with two or more good and sufficient sureties, in the sum of five hundred dollars, for future good behavior: *provided*, that the board of supervisors shall have power to discharge any person committed under the provisions of this act without such conditions when the health of such person is such as to require his or her discharge.

### VENDOR'S LIEN.

**Vendor's Lien.**—An equitable lien allowed the vendor of land sold for the purchase money, where the deed expresses, contrary to the fact, that the purchase money is paid.

The Lien of the vendor exists against all the world, except *bona fide* purchasers without notice. If security is taken for the purchase money, the court will look into the substance of the transaction and see if it was taken in lieu of the purchase money.

### VEXATIOUS SUIT.

**Vexatious Suit.**—A suit that has been instituted maliciously and without probable cause whereby a damage has ensued to the defendant

The Suit need not be altogether without foundation. If the part which is groundless has subjected the party to an inconvenience to which he would not have been exposed had the valid cause of complaint alone have been insisted on, it is injurious. It is necessary that the prosecution should have been carried on without probable cause.

The Damage which a party sustains from a vexatious suit is to his person, reputation or estate; and it is for a jury to determine what his damage has been; and in determining this question, if the suit is clearly vexatious, they will award damages as a punishment as well as for compensation.

## VOTE.

**Vote.**—The supposed voice of the people expressed at the ballot-box. Every citizen of the United States and of the state where he resides is entitled to vote at all elections. The right to vote carries with it the right to be voted for and to hold office. See CITIZEN.

## WAGER.

**Wager.**—A bet; a contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one or more of them on the happening or not happening of an uncertain event.

**A Wager is Legal**, and may be enforced if it be not contrary to public policy or immoral. Wagers on the event of an election or after it is closed are, in most states, unlawful. A wager may be withdrawn at any time before the result has been declared. In most states the losing party may recover the money even after it has been paid over to the winner, on the ground that the wager was against public policy; but in California, the courts hold that after the result of the election has been determined the loser cannot recover back his bet. Either party may withdraw the wager at any time before the event on which it depends occurs and may notify the stakeholder not to pay the stakes over. He must not take the chance of winning and then, if he loses, seek to recover the stakes from the winner. This would be a fraud which the courts will not allow. Courts do not encourage sneaks.

## WARRANTY.

**Warranty.**—There are two kinds of warranty essential to be understood in connection with sales of personal property. These are the *express* and the *implied* warranty. Of the *implied*, that the most universally conceded is the warranty of title. A person in actual possession of personal property sells it to another and delivers over the possession

to the vendee. He is held to deliver with it an implied warranty that his title to the article is perfect, and that hence, if another claims and dispossesses the vendee of the article or its value, as having the superior title, such vendee has his remedy against his vendor for its value upon this implied warranty.

**Sales at the Risk of Purchaser**—The maxim of the common law as to quality is *caveat emptor*; that is, the purchaser must beware, and must himself assume all the risk. He may throw the risk upon the vendor by requiring an express warranty, and without warranty the law gives the purchaser a remedy in case of fraud or deceit. But in the absence of both these the rule is, that the buyer who examines the article himself must abide by all losses arising from latent defects unknown to both parties.

**Implied Warranty.**—In cases where an article is to be delivered at a future day or to be manufactured and delivered, there is an implied warranty that the article shall be at least of a medium quality of goodness. In such case, if it comes short of being merchantable, the vendee is at liberty to return it. This is a very reasonable rule, as the delivery in such case offers to the vendee the first opportunity of examining the article. But the right to return it ought to be exercised as soon as the defect is discovered, as the retaining it for any length of time would raise a presumption of acquiescence in its quality. The practice of any deception by the vendor gives the vendee a choice of two remedies: he may either affirm the contract and recover damages for the fraud perpetrated upon him or he may rescind the contract, return the thing purchased and recover back what he may have paid for it.

**Express Warranty.**—An express warranty may consist of any positive affirmation made by the vendor at the time of the sale in relation to the goods sold and which is intended to have that effect. It is then essentially a contract, and we must look to its terms, to its own limitations and restrictions, to determine what are the rights of the parties.

It is to have applied to it a strict rule of construction—the vendor laying himself under obligations to make good his warranty to the letter whether the quality he has warranted be material or not, and wherever there is an express warranty as to any single point the law will imply none beyond its express terms.

**General Warranty.**—The object of a general warranty is to protect against defects that may not be apparent to the vendee. He seeks by it to save the necessity of any very strict scrutiny and to throw upon the vendor the risk of all defects which are not open to the common observer.

**Sale by Sample.**—In the case of a sale by sample there may be a warranty that the bulk corresponds to the sample. The most that can here be claimed is that the whole quantity of goods sold answers to the sample, and if there proves to be any latent defect in that as well as in the bulk the vendor will not be responsible, as an opportunity is presented him of fully examining the sample.

But it is not every sale where a sample is exhibited that will create a warranty. A mere sale by sample does not have that effect. The rule is, that where the goods in their bulk are fully exposed to the purchaser's examination, he is bound to make it and cannot claim damages without showing an express warranty. The mere exhibition of the sample at the time of the sale can never raise an implied warranty as to the nature or quality of the bulk of the commodity, but other evidence is required to show that both parties mutually understood that they were dealing with the sample, upon an agreement by the vendor that the bulk of the commodity corresponded with it.

**Sale of Horses.**—The property in horses is not easily altered, by sale, without the express consent of the *owner*, for a purchaser gains no property in a horse that has been *stolen*.

**Warranty of Soundness.**—A warranty of soundness in a horse may be defined, in its enlarged sense, a guarantee from constitutional defects; but, in its practical sense, is

construed to exclude every defect by which the animal is rendered less fit for present use and enjoyment.

**Temporary Injuries.**—A defect arising from a temporary injury capable of being speedily cured and not interfering with such enjoyment, the horse is not on that account to be held unsound; still less if the purchaser be informed of it, and admits the exception into the terms of the contract.

## WILLS.

### CALIFORNIA, NEVADA AND IDAHO.

**Wills, General Definition of.**—When a person possessed of property of any kind makes any disposition of it, by way of gift, to take effect at his death, such gift is denominated in law a "will." All wills must be in writing, except in the following cases :

**Nuncupative Wills.**—No nuncupative will shall be good when the estate bequeathed exceeds the value of five hundred dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will or to that effect, nor unless such nuncupative will was made at the time of the last sickness [same in Nevada to here, except the sum of one thousand dollars may be so willed], and at the dwelling-house of the deceased or where he or she had been residing for the space of ten days or more, except where such person was taken sick from home and died before his or her return. Nothing contained herein shall prevent any soldier being in actual service, nor mariner being on shipboard, from disposing of his wages and other personal estate by a nuncupative will.

**Proof of.**—No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof were reduced to writing, within thirty days



after they were spoken. [In Nevada, proof of the words must be made within three months.]

**Probate of.**—No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words or the substance thereof be first committed to writing and process be issued to call in the widow or other person or persons interested, to contest the probate of such will, if they think proper. [Same in Nevada, except the district judge must commit to writing, and process need not issue when the parties are out of state.]

**Form of Will.**—No particular form is necessary to make a will. Anything that shows the *intention* is sufficient, viz: "I give to . . . . all the property of which I may die possessed," if properly witnessed, would be sufficient.

**Rules to be Observed.**—The principal rules to be observed in making a will, are, that the testator, as he is called, should express clearly and unmistakably how he wishes his property disposed of, and that he should execute it freely and without restraint, undue influence or fraudulent misrepresentations, when in sound mind, by signing it and declaring it to be his last will and testament, in the presence of at least two disinterested and competent persons, not mentioned or referred to in the will and who, at his request and in his presence and in the presence of each other, shall thereupon subscribe their names as witnesses.

**Executors, etc.**—The testator should also mention in the will the person or persons he may wish to be his executor or executors. He should also, when he omits to provide for his children or the issue of a deceased child, or for children who may be born after making the will, or for any marriage he may enter into after making the will, show that such omission was intentional. And where he desires that his executor or executors should not be required to give security, he should so state in the will.

**Signing, etc.**—If the testator cannot write or from sickness or other cause is unable to sign, his name may be

signed to the will by some person in his presence and by his express direction.

**Codicil.**—If at any time after he has executed his will he desires to make any alterations in any part of it, or if he desires to make an addition to the will, which is called a "codicil," he must sign the same and have it witnessed in the same manner and with the same formality as is required in executing the original will.

**Revocation, etc.**—No will, in writing, shall be revoked, unless by burning, tearing, canceling or obliterating, the same, with the intention of revoking it by the testator or by some person in his presence or by his direction, or by some other will or codicil in writing, executed as prescribed by law, or by some other writing, signed, attested and subscribed, in the manner provided by law for the execution of a will; but nothing contained in this paragraph shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

**Any Person** over the age of eighteen years, of sound mind, may make, alter or revoke, a will.

**Married Woman.**—Formerly, a married woman could not make a will without the consent of her husband; but as the law now reads, a married woman may dispose of her property by will the same as all other persons and without her husband's acknowledgment. In Nevada, a married woman cannot make a will without the consent of her husband.

**A Single Woman.**—A will executed by a single man or woman is deemed revoked upon marriage, and is not subsequently revived by the death of husband or wife.

**Real and Personal Estate.**—No difference is made under the California, Nevada and Idaho, statutes between wills of real estate and wills of personal estate.

**Probating of.**—A will should be presented to the probate court having jurisdiction, within thirty days after the death of the testator; and after it has been probated it should be recorded in the office of the county recorder.

**Death of Devisee.**—When any estate shall be devised to any child or other relation of the testator, and the devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate so given by the will, in the same manner as the devisee would have done, if he would have survived the testator.

**How Construed.**—Every devise of land in any will shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

**Subsequent Estate.**—Any estate, right or interest, in lands acquired by the testator, after the making of his or her will, shall pass thereby, in like manner as if he possessed it at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

### FORMS.

#### *Simple Form of Will.*

I, . . . . ., of lawful age, at present a resident of . . . . ., do publish and declare this my last will and testament :

1st. I give and bequeath to . . . . . [here mention the amount of money, the goods or other property].

2d. I devise to . . . . . [here mention or describe the land devised].

3d. I give, devise and bequeath, to . . . . ., my wife [the homestead and household furniture or other property].

4th. I direct my executors to sell my real estate or any portion thereof, whenever it becomes necessary or expedient.

5th. I declare that I am out of debt [or, "that the following list contains a statement of all my present indebtedness, other than the debts of the commercial house of which I am a member"].

6th. The remainder of my property I leave to descend according to the law of distribution, provided any member of my family or any of my descendants be living at the time of my death. If none of them be living, then one-fourth of such residue is to go to . . . . ., one-fourth to . . . . ., one-fourth to the . . . . . orphan asylum and one-fourth to the . . . . . society.

Lastly, I appoint . . . . ., my wife, as my executrix, and . . . . . and . . . . . my executors, either or all of them, to serve as they may wish, without the necessity of giving bonds.

[Signed]

. . . . .

. . . . ., 18..

Signed by the testator, and by him published and declared to be his last

will and testament, this .... day of ...., A.D. 18.., in the presence of us and each of us, who at his request and in his presence, have hereto subscribed our names as witnesses.

[Signed]

.....  
.....

#### *Short Form.*

I, ...., of the city of ...., being dangerously ill, but sound in mind, do by these presents make this my last will and testament, and give and bequeath all my estate, real and personal, of which I may die seized and possessed, after paying my funeral expenses and just debts, to my brother, ...., and hereby appoint ...., of ...., executor of this my last will and testament.

In testimony whereof, I have hereunto subscribed my name and affixed my seal this .... day of ...., 18..

his  
.....  
mark

On this ..... day of ....., 18..., the foregoing will was read to the said ...., and executed by him in the presence of us and each other, and declared by said ..... to be his last will and testament, and we subscribed our names as witnesses thereto at his request, in the presence of said ..... and each other.

[Signed]

.....  
.....  
.....

#### *Will.*

In the name of God, amen. I, ...., of the city of ...., and county of ...., state of ...., in the United States of America, merchant, being of sound mind and memory, do make, publish and declare, this my last will and testament, that is to say :

1st. I make, constitute and appoint, ...., of ....., and .... of ....., and [except as in the article hereinafter provided], the survivors and survivor of them, the executors of this my last will and testament, to act without giving any bond, undertaking or security, of any kind ; with the right in either of the said ....., in case of his inability to act by reason of absence from said city of ...., or otherwise, to act by an approved agent or attorney in fact, appointed by him in writing under his hand [such agent or attorney, while so acting to have all the powers of him by whom he shall have been so appointed]. Until the arrival in said city of ..., of ..., or of one of them, and of the agent or attorney in fact, of the other, the said .... shall have full powers to act in the preservation and management of my estate. In case of the inability to act of the said ...., by reason of absence, sickness, death or otherwise, I make, constitute and appoint, as executor in his stead, ...., of the said city of ....

2d. I desire and direct that my copartners in business, who are the said ....., and who with myself are now a copartnership, transacting business in .... and ...., under the firm-name of ....., shall, immediately after my death, or as soon thereafter as may be practicable, take the necessary

measures to ascertain the just amount and value of my share and interest in the said partnership, its stock, assets and property, of every kind, real and personal, including the case on hand, if any, and they shall prepare in writing a full account and statement thereof; at which amount and value, or as near thereto as possible, they may dispose of the same either at public or private sale, and for cash or on credit, as they may think fit; or they may themselves become the purchasers, in which case they shall be entitled to credit, in the payment, of three years, commencing from and after the day of my death; and until the expiration of said period of three years, they shall not be liable to account for or pay over the same or any part thereof, whether upon the order, judgment or decree, of any court or judge or otherwise, to my heirs, legatees or personal representatives or any of them.

This article shall apply fully to my surviving partner, if at my death there shall be but one me surviving.

3d. I declare that all property, real and personal, including all houses, lands and household interests, standing in my name, in this state or elsewhere, does of right and in fact belong to the said partnership of . . . . ., and is partnership property, and no part or portion thereof belongs to me as my separate property.

4th. I give and bequeath to . . . . . during her natural life, the interest on the sum of . . . \$dollars, which sum may remain in the hands of the said . . . . . and of the survivor of them so long during the life of . . . . . as they yearly or quarter-yearly or he shall pay, for the use thereof, at least the same interest as shall be paid upon moneys by the . . . of . . . , or any other equally solvent banking institution. But they or he failing to do so, my executors shall invest said sum of . . . dollars securely at interest, payable to . . . . . , yearly or quarter-yearly, at her will.

I give to . . . . . , wife of . . . . . , of the city of . . . , in . . . , the sum of . . . dollars.

I give to . . . . . , daughter of said . . . . . , . . . dollars, payable to her said father and mother, and for which their receipt shall be a sufficient acquittance, in the hope and expectation on my part that they will invest the same at interest for her until she has attained her lawful majority.

I give to . . . . . dollars each.

I give to . . . . . , of . . . , daughter of . . . . . , of . . . , . . . dollars.

I give to . . . . . , as the cashier or trustee [or, whosoever said cashier or trustee may be], of the association known as the . . . . . , and organized in our family in the year . . . , and in trust for the said association, and the uses and purposes thereof, . . . dollars.

All the rest, residue and remainder, I give to . . . . . and the survivors and survivor of them. After the death of . . . . . , give to them or to such of them as may survive her, the said principal sum of . . . dollars, hereinbefore charged with the payment of the interest thereof, as an annuity to her during her life.

In case of the death of the above legatees or devisees or any of them, during my life, then the sum or sums of money above bequeathed to them or him or her, respectively, I give and bequeath to . . . . . and to the survivors and survivor of them, to be disposed of as they shall see fit. In case of

the death of . . . . . during my life, I give and bequeath in the same manner the said sum of . . . . dollars above charged with an annuity to her.

5th. In the event of my estate not being sufficient to pay all the above and specified sums of money in full, then each and all of the same shall be proportionately reduced.

6th. I hereby revoke all former wills by me made.

[Signed and witnessed as in foregoing forms.]

### Will.

In the name of God, amen.

This is the last will and testament of . . . . ., merchant, now residing in the . . . . of . . . .

Being afflicted by sickness, in full possession of my mind and memory, and knowing the uncertainty of this life and desirous to dispose of my worldly affairs, I ordain this my last will, as follows :

1st. I give and bequeath all my real and personal property, be the same in money, gold, silver, wares and merchandise, and especially my interest in the store of . . . . ., or anywhere else, to my beloved wife . . . ., for her sole use and benefit forever.

2d. Whereas, I have made and accumulated all or nearly all my present property, by and with the assistance of my present wife, before-mentioned, I herewith distinctly declare that I do not give or bequeath anything to the children of my former marriage, but bequeath all my property, both real and personal, to my wife . . . ., to the exclusion of every one else otherwise entitled to the same.

3d. I appoint my beloved wife . . . . the sole executrix of this my last will and testament.

4th. I hereby revoke all wills heretofore made, and especially one made . . . . years ago, in . . . .

In witness whereof, I have hereunto set my hand and affixed my seal, this . . . . day of . . . ., A.D. 18.., at the . . . . of . . . ., . . . .

[Signed]

.....

The above-written instrument was subscribed by the said . . . . ., in our presence and acknowledged by him to each of us, and he at the same time published and declared the above instrument, so subscribed, to be his last will and testament, and we, at the testator's request, in his presence and in each other's presence, have signed our names as witnesses thereto, together with our places of residence.

[Signed]

..... street.

..... street.

### Codicil to a Will.

Whereas, I, . . . . ., of . . . ., etc., have made my last will and testament in writing, bearing date, etc. [and have thereby etc., etc.] Now, I do by this my writing, which I hereby declare to be a codicil to my said will, to be taken as a part thereof [will and direct, etc., etc.], give and bequeath to my niece . . . . ., one gold watch, one large diamond ring and one silver cof-

fee-pot. And whereas, in and by my last will and testament, I have given and bequeathed to my daughter-in-law, ...., the sum of .... dollars, I do hereby order and declare that my will is that only the sum of .... dollars be paid unto her, in full of the said legacy I have as aforesaid given and bequeathed unto her, and that the remaining part of the said legacy be given and paid to my nephew, .... And lastly, it is my desire that this my present codicil be annexed to and made a part of my last will and testament, to all intents and purposes.

In witness whereof, I have hereunto set my hand and seal, this .... day of ...., A.D. 18.. ..... [L.S.]

The above instrument of one sheet was, at the date thereof, declared to us by the testator, ...., to be a codicil to be annexed to his last will and testament; and he acknowledged, to each of us, that he had subscribed the same and we, at his request and in the presence of each other, sign our names hereto as attesting witnesses.

....., residing at ...., in .... county.

....., residing at ...., in .... county.

#### Will.

In the name of God, amen. I, ...., residing in the city of ....., state of ....., being of sound mind and memory, and considering the uncertainty of life, do therefore make, ordain, publish and declare, this to be my last will and testament. That is to say:

1st. After all my lawful debts, whether to government or to individuals, are paid and discharged, I give, bequeath and devise, to my mother, Mrs. ...., now living at ....., state of ....., the sum of .... dollars during her lifetime—what remains of the same at her death to go to her grandchildren by my sister, Mrs. ...., who now lives at ....., state of .....

2d. I give, bequeath and devise, all my personal effects and property in equal portions to my said mother and my said sister ....., and I request that such of my personal effects as in the opinion of my executors may be worthy of preservation and easy of shipment may be sent to them *via* .....

3d. I give, bequeath and devise, all my real estate which remains after satisfying the foregoing provisions, as follows: Two-thirds of the same to the children of the said ....., my sister—the male child to have one-third of the two-thirds so bequeathed—and the remaining one-third of my said real estate I give, bequeath and devise, to my nephew, ...., now living at ..... in the state of ....., at school.

4th. I make and appoint my friends .... and ....., all now in the city of ..... aforesaid, executors of this my last will and testament, hereby revoking all former wills by me made.

.....

[The following clauses may be inserted in either of the foregoing wills:]

#### *Clause concerning Disputes about any Gift or Bequest in a Will.*

And, lastly, my express will and meaning is, and I do hereby order and appoint, that if any difference, dispute, question or controversy, shall be

moved, arise or happen, concerning any gift, bequest, matter or thing, in this my will given and bequeathed, expressed or contained, that then no suit or suits, in law or equity or otherwise, shall be brought, commenced or prosecuted, for and concerning the same, but the same shall be referred wholly to the award, order and determination, of my friends . . . . . and . . . . ., both of, etc., and what they shall order, direct or determine, therein shall be binding and conclusive to all and every person and persons therein concerned. . . . .

*Provide that Sums advanced by Testator in his Lifetime to Children shall be taken as Part of Portion.*

Provided always, and I do hereby declare, that in case I shall in my lifetime advance and pay to any of my children, either sons or daughters, any sum or sums of money for his or their benefit or advancement in the world, or otherwise, and shall signify the same in writing under my hand, then if any such sum or sums shall be equal to the share or shares of such child or children, respectively, of and in the premises, etc., by me hereby devised or bequeathed for their respective benefits, such sum or sums so paid or advanced shall in that case be accounted in full satisfaction of the share or shares of such child or children, respectively, in the said estate and premises; but if such advanced sum or sums shall be less than the share or shares of such child or children, respectively, of and in said premises, etc., then such advanced sum or sums shall be accounted as part only of the share or shares of such child or children therein, and in that case such child or children shall not receive or be entitled to any share or interest of or in such parts of the said premises, etc., which shall have been paid or advanced to him, her or them, for the purposes aforesaid, until the other or others of such child or children shall have received as much of the said premises, etc., as shall make his, her or their, share or shares thereof equal to what shall have been so paid or advanced to or for the benefit, advantage or preferment, of such child or children, respectively, to the end and intent that the said premises may be equally divided among all such children, share and share alike.

*Appointment of Guardianship.*

And I hereby commit the guardianship of all my children until they shall, respectively, attain the age of . . . . . years unto my said wife during her life, if she shall so long continue my widow, and from and after her decease or second marriage unto my trusty and much-esteemed friend . . . . ., his executors and assigns; and do hereby declare that the expenses of the maintenance and education of my said children until they shall attain the age aforesaid or become entitled to the sum or sums of money hereby provided for their benefits, respectively, shall be paid and borne by my said wife by and out of the moneys and estate given and bequeathed to her in and by this my will.

WITNESS.

CALIFORNIA, NEVADA AND IDAHO.

**Witness, Who may be.**—No person shall be excluded as



a witness in any action or proceeding, on account of his religious opinions nor on account of his interest in the action. Parties to the action may be witnesses the same as other persons, and in criminal proceedings the defendant may be sworn as a witness on his own behalf.

**Who shall Not be.**—No person shall be allowed to testify in his own case where the adverse party is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person. [Nevada and Idaho only.]

**Those who are of Unsound Mind** at the time of their production for examination; children under ten years of age who appear incapable of receiving just impressions of the facts of the case; Mongolians, Chinese or Indians; or persons having one-half or more of Indian blood, in an action or proceeding where a white person is a party; persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal. An attorney at law shall not be examined as to communications made by a client without consent. A priest or clergyman shall not disclose a confession made to him in a professional character; nor a physician as to any information necessarily acquired in that capacity; nor a police officer as to the communications made in official confidence, when the public interest would suffer by the disclosure.

**Duty of Witness.**—When a person is served with subpoena to attend as a witness, he must obey the directions of the subpoena or suffer the consequences of a contempt. He must answer all questions pertinent to the matter in issue, but he need not give an answer which will have a tendency to subject him to a punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

**A Witness Disobeying** a subpoena shall forfeit to the aggrieved party the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend.

This Penalty is given only to the party *aggrieved*; and the action can be sustained by no one else. A party does not acquire a right to this penalty by the mere refusal of the witness to attend when duly subpoenaed. Something more is required: it must be shown that the witness was material; and that damages resulted from his non-attendance. If a defaulting witness is wholly unable to give material evidence in the case, it is manifest that no injury could have arisen from his non-attendance, and, consequently, he could not have incurred the penalty. The law does not permit parties to subpoena those who know nothing of the fact at issue in a suit, and then recover a penalty of those who disobey the subpoena.

**Proceedings to recover damages etc.**—If the material witness when duly subpoenaed, refuse or neglect to attend, he is responsible as we have seen, for the statutory penalty and for all damages, and may be proceeded against in various ways:

1. By action at common law for damages.
2. By attachment.
3. By action under the statute for the penalty of one hundred dollars.

**Unless a Witness Demands** his fees for one day's attendance at the time of the service of the subpoena he must attend without them.

**In Criminal Cases.**—In all criminal actions where the husband is the party accused the wife shall be a competent witness, and when the wife is the party accused the husband shall be a competent witness; but neither the husband nor wife shall be compelled or allowed to testify in such cases, unless by consent of both of them: *provided*, that in all cases of personal violence upon either by the other, the injured party [husband or wife] shall be allowed to testify against the other. See **CRIMES AND PUNISHMENTS**.

## APPENDIX.

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### COSTS.

5th. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

### DOGS.

#### CALIFORNIA.

**Liabilities of Owner of Dog.**—The owner, possessor, or harbinger of any dog, or other animal, that shall kill or wound any sheep, lamb, or Angora or Cashmere goats, shall be liable to the owners of the same for double their value, and may be prosecuted therefor before any court of competent jurisdiction.

### FISH COMMISSIONERS.

#### CALIFORNIA.

**Governor to Appoint Fish Commissioners.**—The governor of this state is authorized to appoint three persons, to be styled fish commissioners, whose duty it shall be to establish fish breederries upon such of the waters of this state as, in their judgment, shall be most available for the purpose of stocking and supplying the streams, lakes, and bays of the state, with both foreign and native fish, and for such purpose may purchase and import from other states and countries the spawn or ova of valuable fish, suitable for food, and may introduce the same, when obtained, into such rivers, streams, lakes or bays, as they may deem suited to the habits and successful culture of such fish. They may also employ persons who are skillful and expert in the business of

fish breeding, and may superintend and direct the construction of fish ways and fish ladders that may be built in the streams and waters of this state. The commissioners may, in their discretion, distribute the ova or spawn to be procured by them, to such persons as have proper lakes, ponds or streams, for the propagation and breeding of fish, and who will, without expense to the state, take charge of such breeding and propagation.

**Term of Office.**—Such commissioners shall hold their office for the term of four years, unless others shall be appointed to fill the vacancies occasioned by the death, resignation or inability to attend to the duties required.

**Fish Ways and Ladders.**—It shall be the duty of the commissioners to require, as far as practicable, all persons, firms and corporations, who have erected mill-dams, water-weirs, or other obstructions on rivers or streams within the waters of this state, within six months after the passage of this act, to construct and keep in repair, fish ways or fish ladders, at such mill-dams, water-weirs or obstructions, so that at all seasons of the year fish may ascend above such dam-weir or obstruction to deposit their spawn. Any person, firm or corporation, owning such mill-dam or obstruction, who shall fail or refuse to construct or keep in repair such fish way or fish ladder, after having been notified and required by the commissioners to do so, shall be deemed guilty of misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding five hundred dollars for every such neglect or refusal. The fines and penalties, that may be received for convictions under this section, shall be paid, one half to the district attorney, who shall prosecute the suit, and one half to the common school fund of the county.

**Unlawful Destruction of Fish.**—It shall not be lawful for any person or persons, between the first days of January and June, of each year, to catch or kill any river, lake, brook or salmon trout, in any of the streams, rivers, lakes or other waters within this state, with any seine, gill-net, or

any spear weir, fence, basket, trap, explosive material, or other implements or substances, or in any manner except by hook and line; and it shall not be lawful, at any time, for any person or persons, to catch or kill such fish, in any of the waters of this state, by the use of traps, gill-nets or set-nets, or any poisonous, deleterious or stupifying drug, explosive material, or other substance, *provided, however*, that nothing in this act shall be construed to prohibit the taking of fish in private ponds, constructed expressly for the raising of fish by the owners thereof. And, *provided further*, that any person wanting spawn for the propagating of fish, may take fish from their spawning beds, or elsewhere, during the spawning season. Any person violating the provisions of this section, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, one half to be paid to the district attorney, who shall prosecute the suit, and one half to be paid into the common school fund of the county.

**Taking Fish from Breederles, without Perm'ssion.—**

Every person who shall, in any manner, take or carry away, any trout or other fish, from any stream, pond or reservoir belonging to any person or corporation, which stream, pond or reservoir has been stocked with fish, by hatching the eggs or spawn, or by placing therein, without the consent of the owner of the land covered by and adjoining such stream, pond or reservoir, or without the consent of the agent of the corporation, if such land belong to a corporation, shall be punished by a fine of not less than two, nor more than ten dollars, for every fish so taken or carried away, and shall also be liable to the owner of such stream, pond or reservoir, in a civil suit, for the full value of all fish so taken or carried away.

**Capture of Young Fish.—**All persons engaged in the business of fishing in the bays or harbors of this state with seines or traps, and who shall by said seines or traps, or any other means whatsoever capture the young of any species of fish valuable for food, but which, at

the time of capture are unfit for use as food, shall return the same to the water. Every person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court. One third of all penalties received under this section shall be paid to the informer, one third to the district attorney of the county prosecuting the suit, and one third to the school fund of the county.

**Incidental Expenses.**—The commissioners authorized to be appointed by this act shall receive no compensation for their services. Their necessary expenses incidental to procuring and distributing the ova or spawn of fish, in the employment of fish breeders, and in carrying out the provisions of this act, shall be paid from the appropriations herein made upon accounts or vouchers, to be approved by the state board of examiners. The commissioners shall report biennially, to the governor, an account of their transactions under this act, and make an exhibit of their expenditure of money under its provisions.

**Appropriations.**—The sum of five thousand dollars is hereby appropriated out of any money in the general fund, not otherwise appropriated, and the controller is hereby authorized to draw his warrant on the treasury in payment of accounts of the board of fish commissioners, as herein authorized.

**Indians Excepted.**—Nothing in this act shall be construed to prohibit or prevent Indians from taking trout in any of the streams or lakes of this state, at any time, by the same means heretofore usually used and employed by them.

**All Other Laws Repealed.**—The acts of 1861-2 and 1866 are repealed.

## HUSBAND AND WIFE.

**Custody of Children.** [Applicable to California.]—The husband and father, as such, shall have no rights superior

to those of the wife and mother in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and, without application for a divorce, the husband or wife may bring his or her action for the exclusive control of the children of the marriage; and the court may, during the pending of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education and control of the children of the marriage, as may be just and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

### MINORS.

#### CALIFORNIA.—STATUTORY PROVISIONS, 1871.

**Adoption of Minors.**—Sec. 1. Any one over twenty-one years of age, of a good moral character and standing in the community, excepting a married woman, may adopt one or more minors, but in all cases the party adopting shall be fifteen years older than the minor.

**Consent of Wife.**—Sec. 2. Adoption shall not be allowed by a married man, without the consent of his wife.

**Consent of Parents.**—Sec. 3. A legitimate offspring cannot be adopted without the consent of its parents, nor can an illegitimate one be adopted without the consent of its mother; but the consent of the minor, if over twelve years of age, shall always be necessary.

**Petition for Adoption.**—Sec. 4. Adoption shall take place by a sworn petition of the party adopting to the probate judge of the county where he resides, and his appearance before said court with the parties, whose consent is necessary.

**Order of Court.**—Sec. 5. The judge shall ascertain whether all the necessary parties are present, and if, upon their separate examinations, he is satisfied that the party

applying possesses the necessary qualifications, and that the interest of the minor will be promoted, he shall issue an order reciting, among other things, the names of all the parties, that the necessary consent has been obtained, the age of the party applying and that of the minor, and decreeing that the minor should be adopted and treated in every respect as a lawful child should be treated.

**Rights of Adopted Child.**—Sec. 6. A minor, when adopted, shall be entitled to the name of the party adopting, and the two henceforth shall bear towards each other the legal relations of parent and child, and the minor shall enjoy all the legal rights and be subject to all the duties appertaining to that relation; except, however, that if the adopted child leaves descendents, ascendants, brothers or sisters, the party adopting, nor his relatives, shall not inherit the estate of the adopted child, nor any part thereof; nor shall it be lawful for the adopted child, until he or she is over twenty-one years of age, to make any testamentary dispositions in favor of said party adopting or his relatives.

**Rights of Parents.**—Sec. 7. The parents of an adopted minor are, from the time of adoption, relieved of all parental duties and responsibilities toward the minor, and lose all rights or control over it.

**Legitimation.**—Sec. 8. A child born before wedlock shall, to all intents and purposes, become legitimate by the subsequent marriage of its parents.

**Acknowledgment of Illegitimate Child.**—Sec. 9. Either or both parents of an illegitimate child, or the father with the consent of the wife, or the mother with the consent of the husband, may acknowledge such child as his or their own, by a document in writing, executed by either if single or both if married, or by treating, receiving or acknowledging him publicly as his or their own legitimate child; and such child, and the one mentioned in the foregoing section, shall, to all intents and purposes, be deemed legitimate from the time of its birth, and entitled to all the rights and privileges of legitimate offspring.



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